

TENNESSEE COUNTY GOVERNMENT HANDBOOK

**A General Reference Guide and Summary
of Tennessee and Federal Law Affecting County Governments**

**County Technical Assistance Service
Institute for Public Service
The University of Tennessee**

**September 2000
Seventh Edition**

September 2000

Dear County Official:

This *Tennessee County Government Handbook* is intended to be a basic summary of laws affecting county government. We have tried to include sufficient information to make this publication useful and informative, but the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken. Review of the actual laws and/or regulations is especially important because of the frequent changes that occur. This handbook is intended as a general reference guide and not as an authority. Your attorney should be consulted before relying on any statement contained here.

The information included in this publication is general in nature, although references to more detailed information have been included. An important point in searching for a specific reference in the *Tennessee Code Annotated* is that most volumes have a supplement attached in the back of the volume. You should always consult the supplement first so that you will have the latest version of a particular statute.

The CTAS staff hopes this manual will be useful to you; reference to it will assist you with most of the questions that will arise in your tenure with county government. However, please feel free to contact us if you have questions or comments regarding this publication.

Sincerely,

J. Rodney Carmical
Executive Director

TABLE OF CONTENTS

CHAPTER 1 - TENNESSEE CONSTITUTIONAL PROVISIONS	1
CHAPTER 2 - FORMS OF COUNTY GOVERNMENT	5
CHAPTER 3 - COUNTY OFFICIALS	11
CHAPTER 4 - VACANCIES, REMOVAL FROM OFFICE & CONFLICTS OF INTEREST	35
CHAPTER 5 - ELECTIONS AND REAPPORTIONMENT	41
CHAPTER 6 - SOURCES OF COUNTY REVENUE	57
CHAPTER 7 - FINANCIAL STRUCTURE OF COUNTY GOVERNMENT	87
CHAPTER 8 - COUNTY FINANCING OF CAPITAL PROJECTS & DEBT RETIREMENT	99
CHAPTER 9 - COURTS	107
CHAPTER 10 - PUBLIC SAFETY AND COUNTY CORRECTION FACILITIES	117
CHAPTER 11 - COUNTY ROADS AND HIGHWAY DEPARTMENTS	133
CHAPTER 12 - THE COUNTY DEPARTMENT OF EDUCATION	143
CHAPTER 13 - PERSONNEL MATTERS	151
CHAPTER 14 - LIABILITY ASPECTS OF COUNTY GOVERNMENT	167
CHAPTER 15 - SOLID WASTE, SANITATION, AND HEALTH	173
CHAPTER 16 - PLANNING AND ZONING	187
CHAPTER 17 - MISCELLANEOUS	203
APPENDIX	213
Number of Votes Required for a Majority of the County Legislative Body	215
Sample Resolution to Fix the Jailer's Fee	217
Sample Private Act	219
Using the <i>Tennessee Code Annotated</i>	223
Sample Rules Regulating the Procedures of the County Legislative Body	225
Adoption of a Resolution	232
County Budget Laws	233

INDEX	235
--------------------	-----

EXPANDED TABLE OF CONTENTS

CHAPTER 1 - TENNESSEE CONSTITUTIONAL PROVISIONS	1
Article VII, Section 1: Elected Officials and Governmental Form	1
Article VII, Section 2: Vacancies In County Offices	2
Article XI, Section 9: Limitation on Power Over Local Affairs	2
Misc. Tennessee Constitutional Provisions Affecting County Government	2
CHAPTER 2 - FORMS OF COUNTY GOVERNMENT	5
Traditional Structure	5
County Legislative Body	5
Membership	5
Meetings	5
Budgeting	5
County Executive	6
Qualifications	6
Duties	6
Veto Power	6
Charter Form of County Government	6
City-County Consolidation	7
Private Act of the General Assembly	8
CHAPTER 3 - COUNTY OFFICIALS	11
In General	11
Qualifications	11
Oath of Office	11
Bonds	12
Compensation	14
Amounts	14
Fee System or Salary System	15
Deputies and Assistants	15
Constitutional Offices	16
County Executive	16
Requirements	16
Compensation	16
Vacancies	16
Powers and Duties	16
County Commissioners	17
Requirements	17
Meetings	18
Compensation	18
Vacancies	19
Duties	19
Assessor of Property	19
Compensation	19
Duties	19

Oath of Office	20
Vacancies	20
Appointment of Deputies	20
County Clerk	21
Salaries and Deputies	21
Vacancies	21
Duties	21
Conflict of Interest	21
Register of Deeds	21
Salaries and Deputies	22
Vacancies	22
Requirements and Duties	22
Sheriff	22
Requirements	23
Oath of Office and Bond	23
Salaries and Deputies	23
Vacancies	24
County Trustee	24
Surety Bonds	24
Trustee's Oath	25
Salaries and Deputies	25
Vacancies	25
Duties	25
Clerks of Chancery, Circuit, Criminal and General Sessions Courts	25
Requirements and Duties	26
Oaths and Bonds	26
Salaries and Deputies	26
Vacancies	26
Statutory Offices	27
Chief Administrative Officer (“CAO”) for Highways	27
Qualifications	27
Salaries and Employees	28
Oath of Office and Bond	28
Duties	28
Removal from Office	28
Vacancies	29
Director of Schools	29
County Medical Examiner	29
County Coroner	29
Constables	30
Judicial Commissioners	30
County Surveyors	31
County Officials/Employees Minimum Bond	32

CHAPTER 4 - VACANCIES, REMOVAL FROM OFFICE & CONFLICTS OF INTEREST

.	35
Vacancies in Office	35

Ouster	35
Temporary Vacancies	36
Vacancies Due to Military Service	36
Temporary Absence of County Exec. & Interim County Exec.	36
Interim Provisions for Other County Officials	36
Procedure for Filling Vacancies	37
Election of a Successor by the People	37
Removal from Office	37
Conflict of Interest	38
 CHAPTER 5 - ELECTIONS AND REAPPORTIONMENT	41
The County Election Commission	41
Appointment and Removal	41
Qualifications and Disqualifications	41
Oath of Office and Organization	41
Office Hours	41
Meetings	42
Duties	42
Publication of Election Notices	42
Submission of Semi-Annual Report	42
Promotion of Voter Participation	42
Employment of Administrator of Elections	42
Appointment and Education of Election Officials	43
Compensation and Funding	44
Nominations and Qualifying Deadlines	44
Statewide Organization of Political Parties	44
Nominating Process	45
Nominating Petitions	46
Restrictions on Candidacy	46
Qualifying Deadlines and Procedure	46
Write-In Candidates	47
Tie Votes	47
Procedure for Elections	48
Early Voting Procedures	48
Times for Regular Elections	48
Special Elections	49
Referenda	49
National Voter Registration Act	50
Campaign Financial Disclosure	50
Campaign Financial Disclosure Act of 1980	50
Time Covered by Reports	51
Contents of Reports	51
Closing Out Accounts and Using Unexpended Funds	51
Enforcement	52
Campaign Contribution Limits	52
Campaign Contribution Limits Act	52
Fund Raising During the General Assembly Session	53

Conflict of Interest Disclosure	53
Disclosure Statements	53
County Reapportionment	54
Requirements for Reapportionment	54
Reapportionment Process	54
Enforcement	55
School Board and Highway Commission Districts	55
Assistance in Reapportionment	55
CHAPTER 6 - SOURCES OF COUNTY REVENUE	57
Property Taxes and In Lieu of Tax Payments	57
Property Tax	57
Description of the Tax	57
Assessment	58
Appraisals	58
Property Tax Relief	58
Exemptions	59
Property Tax Rate	59
Certified Tax Rate	59
Administrator	60
Collector	61
Time Payable	61
Partial Payment	61
Discount for Early Payment	61
Commission	61
Interest and Penalties	61
Distribution	62
Collection of Delinquent Taxes	62
Timetable of Significant Dates and Activities	62
T.V.A. In Lieu of Tax Payments	64
Municipal Electric and Gas System Tax Equivalent Payments	65
Severance Taxes	65
Coal Severance Tax	65
Oil and Gas Severance Tax	66
County Mineral Severance Tax (General Law)	66
County Mineral Severance Tax (Private Act)	66
Sales and Use Taxes	67
State Sales and Use Tax	67
Local Option Sales Tax	68
Petroleum Products and Alternative Fuel Taxes	69
Gasoline Tax	69
Diesel Tax	70
Special Privilege Tax on Petroleum Products	71
Liquefied Gas Tax	72
Compressed Natural Gas	72
Highway User Fuel Tax	73
Gasoline Tax for Local Transportation Funding	73

Alcohol and Tobacco Taxes	73
Alcoholic Beverage Tax	73
Mixed Drink Tax (Liquor By the Drink Tax)	74
Beer Tax and Beer Permit Privilege Tax	75
Wholesale Beer Tax	75
Tobacco Tax	76
Motor Vehicle Taxes	76
Motor Vehicle Title and Registration Taxes	76
Mobile Home Registration Fee	77
County Motor Vehicle Privilege Tax (Wheel Tax)	77
Business Taxes	77
Business Tax	77
Excise Tax Applied to Banks	78
Other Taxes	79
Hall Income Tax	79
Hotel/Motel Tax	79
State Litigation Tax	80
County Litigation Taxes	82
Marriage License Taxes	83
Fees of County Officers	83
Clerks of Courts	84
County Clerks	84
Registers	84
Sheriffs	84
Jailers' Fees	84
Trustees	84
Accounting for Fees	84
CHAPTER 7 - FINANCIAL STRUCTURE OF COUNTY GOVERNMENT	87
Financial Management Under the General Law	87
Budgeting	87
Accounting	88
Purchasing	89
Investment of County Funds	91
Financial Management Under General Laws With Local Option Application	92
Local Option Budgeting Law of 1993	92
The County Financial Management System of 1981	93
The Fiscal Control Acts of 1957	94
The County Budgeting Law of 1957	95
The County Fiscal Procedure Law of 1957	95
The County Purchasing Law of 1957	95
Financial Management Under Private Acts	96
Financial Management of Fee Offices	96
Auditing	97
CHAPTER 8 - COUNTY FINANCING OF CAPITAL PROJECTS & DEBT RETIREMENT	99

Limit on Amount of Outstanding Debt	100
Types of Funding	100
Bonds Issued Under the Local Government Public Obligations Act	100
General Obligation Bonds	100
Revenue Bonds.	101
Refunding Bonds	101
Bond Anticipation Notes	101
Capital Outlay Notes	101
Grant Anticipation Notes	101
Tax (Revenue) Anticipation Notes	101
School Bonds	102
Tennessee Local Development Authority Loans	102
Economic Development Bonds	103
Industrial Development Corporations	103
Industrial Building Bond Act of 1955	104
Industrial Building Revenue Bond Act	104
Other Bonds	104
Special Financing of County Obligations	105
Funding Bonds	105
State Emergency Loans	105
Economic Adjustment Financing	106
Debt Retirement	106
Leases for Capital Improvement Projects	106
Summary	106
 CHAPTER 9 - COURTS	 107
The Tennessee Plan	107
The Tennessee Supreme Court	107
Organization	107
Jurisdiction	107
Court of Appeals	108
Organization	108
Jurisdiction	108
Court of Criminal Appeals	108
Organization	108
Jurisdiction	109
Trial Courts	109
Organization	109
Court Clerks	110
Jurisdiction of Circuit Court	110
Jurisdiction of Chancery Court	111
Concurrent Jurisdiction of Circuit and Chancery Courts	113
Jurisdiction of Criminal Courts	113
General Sessions and other Inferior Courts	114
General Sessions Court	114
Jurisdiction	114
Juvenile Courts	115

General Sessions and Juvenile Court Interchange	115
Probate Courts	116
Special Courts	116
Judicial Commissioners	116
CHAPTER 10 - PUBLIC SAFETY AND COUNTY CORRECTIONAL/ FACILITIES	117
County Fire Protection	117
Civil Defense (Emergency Management)	117
Emergency Communication Districts	118
County Law Enforcement	119
In-service Training	119
Drug Law Enforcement and Drug Abuse Prevention	119
D.U.I. Forfeitures	120
Fingerprinting	120
Handgun Permits and Firearm Purchases	120
County Correctional Facilities and Prisoner Care	120
Custody of the Jail	120
Jailers' Fees	121
Custody of the Workhouse	121
Superintendent's duties	122
Support and Care of Prisoners	123
Medical Care of Prisoners	124
Minimum Standards for Facilities and Prisoner Care	125
Work and Education Programs	125
Road Work and Other Prisoner Work Programs	125
Work Release	126
Inmate Incentive Program	127
County Correctional Incentives Act	128
Community Corrections Act of 1985	128
Joint (Multi-county) County Jails and Workhouses	129
Detention of Juveniles	129
Information to At Risk Employees Regarding Infectious Diseases	132
CHAPTER 11 - COUNTY ROADS AND HIGHWAY DEPARTMENTS	133
County Uniform Highway Law ("CUHL")	133
Duties and Authority	133
Annual Work Program	133
Inventory of Machinery and Equipment	134
Purchasing Provisions and Chart of Accounts	134
Prohibited Acts and Penalties	135
Removal From Office and Withholding of State Funds	137
County Roads v. Private Roads	137
County Road List	138
Acceptance and Closing of County Roads	139
Eminent Domain	141
Public Fords, Ferries and Bridges	141

CHAPTER 12 - THE COUNTY DEPARTMENT OF EDUCATION	143
The County Board of Education	144
Director of Schools	146
The County School Budget	148
State Funds for Education	149
Reference Material on County Departments of Education	149
 CHAPTER 13 - PERSONNEL MATTERS	151
Personnel Policies	151
Required Basic Personnel Policies	151
Deputies and Assistants	152
Courthouse Hours and Office Space	154
Residence	154
Voting Leave	154
Jury Duty	154
Maternity Leave	155
Military Leave	156
The Fair Labor Standards Act	156
Exemptions	157
Compensable Hours	157
Minimum Wage	157
Overtime	157
Compensatory (“Comp”) Time	158
Recordkeeping Requirements	158
Enforcement and Penalties	159
Equal Pay Provisions	159
Family and Medical Leave Act	159
Americans with Disabilities Act	160
Equal Employment Opportunity	160
Miscellaneous Personnel Matters	161
Insurance	161
Continuation of Insurance Coverage - COBRA	162
Immigration Records	162
Drug and Alcohol Testing	162
Workers' Compensation	163
Unemployment Compensation	163
Termination Pay	164
Retirement	165
Expense Accounts	165
Automobiles	166
Wage Assignments and Garnishments	166
FIT, FICA Withholding, and Miscellaneous Reporting Matters	166
 CHAPTER 14 - LIABILITY ASPECTS OF COUNTY GOVERNMENT	167
Tennessee Governmental Tort Liability Act	167
Liability for Personnel Matters	171

Other Non-Tort Liability	172
Breach of Contract	172
Other Actions	172
CHAPTER 15 - SOLID WASTE, SANITATION, AND HEALTH	173
Solid Waste Management, Collection and Disposal - Title 5	173
Solid Waste Management, Collection and Disposal - Title 68, Chapter 211	173
Local Planning	173
Startup Procedure	173
Plan Requirements	174
Solid Waste Authority	174
Public Ownership of Solid Waste Facilities	175
Flow Control and Regional Approval Options	175
Sanctions	175
Operational Requirements	175
Minimum Service Levels	176
25% Reduction Goal	176
Problem Wastes	177
Baled Waste and Inspections	177
Education	177
Recycling	177
Reporting Requirements	178
State Revenue, Funding and Grants	178
Local Revenue Sources	178
Tipping Fee	178
Host Fee	179
General Surcharge	179
Disposal Fee	179
Property Tax	179
Service Charge	179
Landfill Approval By County - The “Jackson Law”	179
Hazardous Chemical Right-to-Know-Law	180
Purpose and Scope	180
Notice Requirements	180
Labeling Requirements	181
Training Requirements	181
Hazardous Waste and Hazardous Substances	181
Underground Storage Tanks	182
Medical Services	182
County Board of Health	182
County Health Department	182
Community Health Agencies	183
Health Care Facilities	183
Public School Nurse Program	183
Ambulance and Emergency Medical Services	183
Public Water Supplies and Wastewater Treatment	184
Urban Type Public Facilities	184

CHAPTER 16 - PLANNING AND ZONING	187
Regional Planning	187
Public Chapter 1101 and County Growth Plans	187
Planning	187
Annexation	191
Incorporation	195
Consolidation of City and County Governments	196
Other Provisions	196
Other Planning Provisions	196
Membership of Planning Commission	196
Duties and Powers of Planning Commission	197
Community Planning	198
County Zoning	198
Zoning Regulation	198
Amendments	199
Board of Zoning Appeals	199
County Building Commissioner (Building Inspector)	199
Special Zoning Provisions	199
Enforcement and Application	200
Municipal Zoning Outside City Limits	200
Adoption of Building Codes	200
Industrial and Economic Development	201
Industrial Development Corporations	201
Special Assessments, Impact Fees, and Adequate Facilities Taxes	201
Special Assessments	201
Impact Fees	201
Adequate Facilities Taxes	201
CHAPTER 17 - MISCELLANEOUS	203
Open Meetings Act	203
County Records	203
Open Records Requirement	203
Storage and Disposition of County Records	204
Computer Records Storage Requirements	205
Remote Electronic Access to County Records	205
Tennessee Electronic Commerce Act	205
Geographic Information Systems Records	206
Credit Cards	207
Buildings and Property	207
Purchase, Sale, and Lease of County Property	207
Libraries	207
Abandoned Personal Property	208
Miscellaneous County Regulatory Authority	209
Cable TV	209
Debris Removal and Weed Control	210
Regulation of Adult-Oriented Entertainment and Massage	210

Animal Control	211
Enforcement Powers	211
Intergovernmental Agreements	211
Commercial Driver Licenses	211
APPENDIX	213
Number of Votes Required for a Majority of the County Legislative Body	215
Sample Resolution to Fix the Jailer's Fee	217
Sample Private Act	219
Using the <i>Tennessee Code Annotated</i>	223
Samples Rules Regulating the Procedures of the County Legislative Body	225
Adoption of a Resolution	232
County Budget Laws	233
INDEX	235

CHAPTER 1

TENNESSEE CONSTITUTIONAL PROVISIONS

Under the Tennessee Constitution, counties are an extension of the state and are deemed political subdivisions of the state which are created by its sovereign power to carry out the functions mandated by state law. Counties, as the creation of the state, are subject to control by the General Assembly. However, the General Assembly is subject to some limitation on its discretion regarding counties which is imposed by the state's constitution. A long line of Tennessee Supreme Court case law has held that counties have no authority except that expressly given them by statute or necessarily implied from it. *Bayless v. Knox County*, 286 S.W.2d 579 (Tenn. 1955). Although statutes are the primary source of county authority, the Tennessee Constitution does have a few provisions specifically addressed to county government.

Article VII, Section 1: Elected Officials and Governmental Form

Several amendments to the Tennessee Constitution were approved in 1978; among them was an amendment restructuring the basic framework of county government. Article VII, Section 1 of the Tennessee Constitution now provides counties with the following constitutional officers: county executive, sheriff, trustee, register, county clerk, and assessor of property. This section also requires the election of a legislative body of not more than twenty-five members, with no more than three members to be elected from a single district. The General Assembly sets the qualifications and duties of these offices.

Before the 1978 constitutional changes, county government had been difficult to divide into executive, legislative, and judicial branches. With the creation of the office of county executive and of the county legislative body, along with several judicial interpretations of the powers and duties of each, county government is now more nearly divided into three branches, even though the county executive must share executive powers with other constitutional officers. The legislature is afforded wide latitude in determining the duties that may be assigned to the various constitutional officers. *Metropolitan Government v. Poe*, 383 S.W.2d 265 (Tenn. 1964).

Article VII, Section 1 also provides that the General Assembly “may provide alternate forms of county governments including the right to charter and the manner by which a referendum may be called.” The Tennessee Supreme Court has stated that when the General Assembly authorizes any deviation from the government provided for in this article, such action must be ratified by the people in a referendum called for that purpose. *State ex rel. Maner v. Leach*, 588 S.W.2d 534 (Tenn. 1979). Other than the county charter (T.C.A. §§ 5-1-201 through 5-1-214), no additional alternatives are now offered by the General Assembly except for the metropolitan and unification forms of government, discussed below, which were provided for in an earlier constitutional amendment and implementing legislation. TENN. CONST., art. XI, § 9; T.C.A. §§ 7-1-101 through 7-3-313, 7-21-101 through 7-21-408.

Article VII, Section 2: Vacancies In County Offices

Vacancies in county offices are to be filled by the county legislative body, and any person so appointed serves until a successor is elected at the next election after the vacancy. The Tennessee Supreme Court has determined that the term “next election” means the next general election or other countywide election in the county. *McPherson v. Everett*, 594 S.W.2d 677 (Tenn. 1980).

Article XI, Section 9: Limitation on Power Over Local Affairs

The General Assembly has no power to pass a special, local, or private act which would remove an incumbent from any municipal or county office, change the term of office, or alter the salary of the office until the end of the current term.

Any act of the General Assembly which is private or local in form or effect, applicable to a particular county, must require within the terms of the act either approval by a two-thirds vote of the county legislative body or approval by the people of the county in a referendum.

Article XI, Section 9 also provides for optional consolidation of municipal and county government. Such a consolidation must be approved by vote of those residents within the municipality as well as those who reside in the county outside the municipal corporation to be consolidated with the county government.

Miscellaneous Tennessee Constitutional Provisions Affecting County Government

Article II, Section 28 of the Tennessee Constitution deals with property taxation and other tax matters. It also states that each respective taxing authority shall apply the same tax rate to all property within its jurisdiction. However, the Supreme Court has found that the General Assembly may authorize counties to levy a different property tax rate on property within and without municipalities for school bonds, county road purposes, and perhaps other services as well. *Albert v. Williamson County*, 798 S.W.2d 758 (Tenn. 1990); Op. Tenn. Att’y Gen. 92-29 (April 7, 1992). Also, so-called “double taxation”, levied by a county and city to fund similar services, if statutorily authorized, is not unconstitutional. *Oliver v. King*, 612 S.W.2d 152 (Tenn. 1981); Op. Tenn. Att’y Gen. U95-96 (Dec. 22, 1995).

Article II, Section 29 grants the General Assembly the authority to authorize counties and municipalities to impose taxes for county or municipal purposes, in such a manner as is prescribed by law. This section also states that the credit of a county or municipality may not be given or loaned to or in aid of any person, company, association or corporation, except upon an election wherein a three-fourths majority of the voters cast ballots in favor of such an extension of credit.

Also, Article VI, Section 13 provides for the appointment of clerks and masters by chancellors for terms of six years, and for the popular election of clerks of inferior courts, by county or district, for terms of four years. The circuit court clerk is the prime example of a popularly elected inferior court clerk.

Article X, Section 1 requires that every person chosen or appointed to any office of trust or profit under the constitution or any statute must take an oath to support the constitution of this state and of the United States, as well as an oath of office before entering on the duties of the office.

Article X, Section 3 prohibits any official or candidate from accepting any type gift or reward which might be considered a bribe. The section also provides that any person who directly or indirectly promises or bestows any such gift or reward in order to be elected is punishable as provided by law.

Article X, Section 4 provides the method by which new counties may be established. This section also restricts the General Assembly in consolidating counties by stating that the seat of Justice may not be removed without approval by two-thirds of the voters of the county being abolished (*James County v. Hamilton County*, 89 Tenn. 237, 14 S.W. 601 (1890)), but this limitation does not apply to Obion and Cocke County. This section is complicated and limits the discretion of the General Assembly in dealing with the boundaries or existence of certain specified counties (which are often referred to as “constitutional” counties).

Article XI, Section 17 provides that no county office created by the legislature shall be filled in any manner other than by vote of the people or by appointment of the county legislative body.

CHAPTER 2

FORMS OF COUNTY GOVERNMENT

Traditional Structure

The most basic and widely used form of county government in Tennessee is one with a popularly elected county executive who is the administrative head of the county, and a popularly elected board of county commissioners (county legislative body) which is the legislative branch of the county. Also, under this form a sheriff, county clerk, trustee, register, and assessor of property must be popularly elected. This is the constitutionally required form of county government unless a county has followed the provisions provided by the Tennessee Constitution and implemented by statute to establish an alternate form of government.

County Legislative Body

Membership. Except in counties with a county charter or consolidated city-county (metropolitan or unification) form of government, the county legislative body is made up of not less than nine nor more than twenty-five members, elected from districts. No more than three members may be elected from any one district. T.C.A. § 5-5-102. Districts must be reapportioned at least every ten years, and commissioners must represent substantially equal populations based on the latest federal census. T.C.A. § 5-1-111. Members are elected by the people for four year terms. T.C.A. § 5-5-102.

Meetings. The county legislative body is required by law to meet at least four times annually at a time and place established by resolution of the county legislative body. All meetings must be public and no secret votes may be taken. T.C.A. § 5-5-104. The meetings of the county commission are presided over by a chairperson, along with the chairperson pro tempore, is elected annually by the membership at the first meeting after September 1. The county executive may be elected as chairperson; if the county executive chooses to accept the chair, he or she may vote only to break a tie, and must forfeit veto authority over the actions of the legislative body. T.C.A. § 5-5-103. Alternatively, the legislative body may also elect one of its own members as chairperson, in which case the member who is also chairperson may vote on all issues as a regular member of the body, but may not vote again to break a tie vote. T.C.A. § 5-5-109. If the chairperson fails or is unable to attend the meeting, the chairperson pro tempore will discharge the chairperson's duties. If neither is present, the clerk will call the meeting to order for the election of one of the membership to temporarily preside over the meeting. T.C.A. § 5-5-103. A majority of the membership of the entire county legislative body constitutes a quorum for transaction of business, including election of officials or confirmation of appointees, fixing salaries, appropriating money, and any other business coming before the body. A majority of the full membership, not merely a majority of the quorum, is required to pass almost all measures. T.C.A. §§ 5-5-108, 5-5-109. (See Appendix for full discussion and table of votes required for a majority.)

Budgeting. The county legislative body assembled in session is authorized to act for the county. T.C.A. § 5-1-103. All funds to be used in the operation of the county must be appropriated for that use by the county legislative body, which can appropriate money only for expenditures sanctioned by state law. T.C.A. § 5-9-401. It is the duty of the county legislative body to adopt a budget and

to appropriate funds for the ensuing fiscal year for all county departments and agencies. T.C.A. § 5-9-404. The county executive who does not chair the county legislative body may veto the entire county budget, but may not veto portions of it. T.C.A. § 5-6-107.

County Executive

Qualifications. The county executive is also elected by the people of the county for a term of four years. T.C.A. § 5-6-102. In order to run for the office a person must be a qualified voter of the county, at least twenty-five years old, and a resident of the county for at least one full year prior to filing a nominating petition for the office. T.C.A. § 5-6-104.

Duties. The county executive has various duties. For example, he or she serves as a non-voting, ex officio member of the county legislative body. Additionally, the county executive or a designated representative of the county executive serves as a non-voting, ex officio member of each committee of the county legislative body and of each board, commission, or authority of the county government. T.C.A. § 5-6-106. Except as provided by general law or private act, the county executive appoints members of county boards, commissions, and department heads, subject to confirmation by the county legislative body. T.C.A. § 5-6-106. In actual practice, this exception to the county executive's appointment power is a large one since general laws or private acts provide for the selection of most department heads and boards.

Veto Power. A county executive who does not chair the county legislative body may veto legislative resolutions. The executive must take action on a resolution within ten days after receiving it in written form. The executive may sign and approve the resolution, veto it, or allow it to become effective without his or her signature. If the executive vetoes a resolution, it must be returned to the county legislative body along with reasons for the veto. The county legislative body may then override the executive veto by majority vote at its next regular meeting or at a special meeting occurring within twenty days of the receipt of the veto message. T.C.A. § 5-6-107.

The county executive performs other duties and also shares administrative tasks with the other constitutional and statutory county officials. The powers and duties of each county official are specifically established through statute and covered in more detail in Chapter 3 of this publication.

Charter Form of County Government

In 1977 the Constitutional Convention adopted and the voters approved an amendment to Article VII, Section 1 of the Tennessee Constitution which states in part:

The General Assembly may provide alternate forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

This amendment gave rise to a series of statutes authorizing counties to adopt a charter form of government. T.C.A. §§ 5-1-201 through 5-1-214. Any county wishing to adopt a charter must first create a charter commission by one of four possible methods: resolution of the county legislative body, proclamation of the county executive ratified by a two-thirds (2/3) majority vote of the county

legislative body, petition by ten percent (10%) of the qualified voters, or private act of the General Assembly. Members of the charter commission are elected by popular vote if the resolution or petition method is used. Within nine months the charter commission must present a proposed charter which is then submitted for approval in a referendum. State statutes provide an outline for the contents of such a charter, with the limitation that the powers and duties of constitutional officers as prescribed in the general law shall not be diminished under the county charter. However, the charter may allow for some restructuring of several statutorily-created offices and boards, such as those created by private act, without seeking further private acts. T.C.A. § 5-1-210. Under this form of government the county legislative body is authorized to pass ordinances dealing with county matters and to provide penalties for their violation, although these penalties cannot exceed certain statutory maximums. T.C.A. § 5-1-211.

The statutes authorizing a county charter provide for limited organizational changes and ordinance powers, but do not provide any extension of the authority for home rule in vital areas such as local option taxation. As with all reorganizations, obtaining a consensus within the county and among the membership of the charter commission is a major obstacle to the adoption of a county charter. To date, only Shelby and Knox Counties have chosen this form of government, although other counties have studied the matter or currently have it under consideration.

City-County Consolidation

In 1953, Article XI, Section 9 of the Tennessee Constitution was amended to permit the General Assembly to "...provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located." The General Assembly has devised two statutory processes through which counties may consolidate with the cities within them, the metropolitan government charter process codified in T.C.A. §§ 7-1-101 through 7-3-313, and the unification government charter process codified at T.C.A. §§ 7-21-101 through 7-21-408.

Under the metropolitan government consolidation statutes, this process begins with the selection of a charter commission. A charter commission may be created by one of three methods. The most commonly used method is one in which the charter commission is created by a majority vote on a resolution approved by the governing bodies of both the most populous city and the county. A second method is by private act of the General Assembly. The third method is by petition signed by qualified voters in the county in a number equaling at least ten percent (10%) of the votes cast in the county for governor in the last gubernatorial election. The commission members are either appointed by the county executive and the mayor of the county's major city or elected by the voters as determined by the resolution or petition, if those methods are used (or by resolution if the petition does not specify a method of selection of charter members. If a private act is used, the private act determines the method of selection. The charter must contain provisions for general service and urban service districts, for a metropolitan council, for elections and terms of office, for an education department, and for other administrative departments. Smaller (less populous) cities within the county may retain their charter if their governing bodies choose to not send a representative to the charter commission to write an appendix to the charter for inclusion of the smaller city. Several cities and counties have formed charter commissions and voted on consolidation under the

metropolitan government statutes, but only Nashville-Davidson County and Lynchburg-Moore County have adopted a consolidated form of government as of this writing. One obvious difficulty in adopting a metropolitan form of government is the requirement that the metropolitan government charter receive a majority of the referendum votes both within the city and without the city that is to consolidate with the county.

The unification charter form of government is similar to the metropolitan model; however, while the latter form is available to all counties, the unification form is only available to counties with a county or metropolitan charter. T.C.A. §§ 7-21-101 through 7-21-408. As of this writing no county has adopted a unification charter although it has been the subject of a vote in Knoxville and Knox County.

Private Act of the General Assembly

Counties have relied upon private acts of the General Assembly to provide authority where none was granted by the general law, and to provide for offices not established by the general law. Since the 1978 amendment to Article VII, Section 1 was an attempt to provide uniformity in county governmental structure, the implementing legislation passed by the General Assembly provided that all conflicting general laws or private acts were repealed by it. This means that counties with varying structures under private acts adopted prior to 1978 were required to conform to the uniform pattern provided by the General Assembly. Counties having structures of county government varying from the general law pattern under private acts adopted prior to 1978 have since taken action to elect county executives and legislative bodies and otherwise conform to the required pattern. Private acts continue to provide authority for actions that are not specifically authorized in the general law and for officials or bodies not provided by general law, such as county highway commissions in many counties.

When a county legislative body deems a private act in the best interest of the county, it usually adopts a resolution requesting a member of the general assembly representing the people of the county to introduce such a bill. Such a resolution is not required by law, but is a commonly accepted practice. After a private act bill passes the General Assembly and becomes law either upon the signature of the Governor or after being on the Governor's desk without veto for the constitutionally required ten calendar days, Sundays excepted, the private act must still obtain local approval before the act is effective. TENN. CONST., art. III, § 18 and art. IX, § 9. The method of local approval is provided for in the act itself and is either by two-thirds (2/3) majority of the county legislative body or by a majority of the voters in a referendum. Also, for the private act to become effective, local approval must take place within any time limit set in the act, or if no time limit is set in the act, then by December 1 of the year of enactment. Also, local approval must be certified to the secretary of state by the presiding officer (chair) of the county legislative body or the chair of the county election commission, as appropriate. T.C.A. § 8-3-202.

CHAPTER 3

COUNTY OFFICIALS

In General

The Tennessee Constitution expressly provides for certain county offices, while others are created by the state legislature. All these offices have several requirements and characteristics in common. The following principles are general ones which apply to each office unless a specific statute provides otherwise.

Qualifications. General qualifications of officeholders are located in the *Tennessee Code Annotated*, which provides that all persons over eighteen years old, who are citizens of the United States and of Tennessee, and who meet certain residency requirements are qualified to hold office unless the person:

1. has been convicted of offering or giving a bribe, of larceny, or any other offense declared infamous by law, unless the person has been restored to citizenship as prescribed by law;
2. has not paid a judgment for money received in an official capacity, which is due to the United States, Tennessee, or any county;
3. has defaulted to the treasury at the time of election (in which case the election is void);
4. is a soldier, seaman, marine, or airman in the regular United States army, navy or air force; or
5. is a member of Congress or holds any office of profit or trust under any foreign power, other state of the Union, or the United States.

T.C.A. § 8-18-101.

Additional statutory qualifications are required for certain county offices and will be discussed in the individual county office section. The offices and duties noted in this chapter may vary in counties with a metropolitan government charter or a county government charter.

Oath of Office. The Tennessee Constitution, Article X, Section 1, provides that every person chosen to any office of trust must take an oath to “support the Constitution of this state and of the United States, and an oath of office.” The following is the statutory oath of office to be taken by county officials, unless another oath is specifically prescribed by law for a particular office:

I do solemnly swear that I will perform with fidelity, the duties of the office to which I have been appointed (or elected, as the case may be), and which I am about to assume.

T.C.A. § 8-18-111.

An example of the constitutional oath combined with the statutory oath of office is as follows:

I do solemnly swear that I will support the Constitution of this state and of the United States, and that I will perform with fidelity the duties of the office to which I have been appointed (or elected, as the case may be), and which I am about to assume.

Oaths of office for county officials may be administered by the county executive, the county clerk, or a judge of any court of record in the county. The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns, in the case of elected officials, or after appointment, in the case of appointed officials. However, even if the official files an oath before the scheduled start of a term of office, the official may not take office until the term officially begins. T.C.A. § 8-18-109. The oath must be written and subscribed by the person taking it. Accompanying the oath must be a certificate executed by the officer administering the oath, specifying the day and the year it was taken. T.C.A. § 8-18-107. The oath and the certificate are filed in the office of the county clerk, who endorses on them the day and year of filing, and signs the endorsement. T.C.A. §§ 8-18-109, 8-18-110.

Bonds. An official bond is an instrument which requires the party or parties designated as sureties to pay a specified sum of money if the official who executes the bond fails to perform certain acts or performs wrongful and injurious acts in the office. In other words, an official bond is a written promise, made by a public official (1) to perform all the duties of the office, (2) to pay over to authorized persons all funds received in an official capacity, (3) to keep all records required by law, (4) to turn over to his or her successor all records, money, and property, and (5) to refrain from anything that is illegal, improper, or harmful while acting in an official capacity. If the official fails to perform the duties, violates the law, or commits a harmful act, the person who is injured may collect damages from the sureties on the official bond. The sureties must be surety companies doing business in Tennessee, unless the county commission by two-thirds (2/3) majority vote authorizes two individuals to act as good sureties instead of a surety company. T.C.A. §§ 8-19-111, 8-19-101, 8-19-301. The official bonds of constables must use a surety company authorized to do business in Tennessee. T.C.A. § 8-10-106.

The following county officials must execute a surety bond: school superintendent/director of schools, highway officials, county executive, court clerks, sheriff, register, property assessor, constable, notary public, coroner, surveyor, trustee, and auditor. County commissioners are not required to file surety bonds. Bond amounts for each official are included in the following material and are summarized in the chart at the end of this chapter.

The form of official bonds is prescribed by the Comptroller of the Treasury, with the approval of the attorney general. T.C.A. § 8-19-101. Blank copies of official bonds, ready for use, are available from the Comptroller, Division of Local Finance.

Official bonds of the county executive, sheriff, county trustee, assessor of property, register of deeds, the chief administrative officer of the county highway department, the director of accounts and budgets and purchasing agent under the optional 1957 County Fiscal Procedures Acts, the finance director under the optional 1981 County Financial Management System, and any other official vested by law the authority to administer state shared funds, must be approved by the county legislative

body, recorded in the office of the register of deeds and transmitted to the Comptroller of the Treasury for safekeeping. T.C.A. §§ 8-19-102, 8-19-103, 54-4-103. Official bonds of clerks of court must be approved and certified by the court, entered into the minutes of the court, recorded in the office of register of deeds and transmitted to the Comptroller of the Treasury for safekeeping. T.C.A. § 8-2-205 . The official bonds of other county officials, constables, and county employees required to have bonds shall be approved by the county legislative body, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-9-103, 8-10-106,

The register of deeds of each county must maintain a special record book in which each official bond is recorded, unless the register is authorized to use a system of continuous recordings of all instruments. T.C.A. §§ 8-19-104, 8-13-108(d). The register of deeds must endorse on the bond the day and year on which it was recorded and must sign the endorsement. Similarly, the county clerk, with respect to bonds filed for safekeeping in the office of county clerk, must endorse the filing date and sign the endorsement. Failure of the register or county clerk to endorse and sign the bond is a misdemeanor. T.C.A. § 8-19-116.

Official bonds of officers which must be transmitted to the Comptroller of the Treasury must be so transmitted for filing with within forty days of election or twenty days after the term of office begins. T.C.A. § 8-19-115.

If any officer who is required by law to give bond fails to file it in the proper office within the time prescribed, the office is vacated. In such cases the officer in whose office the bond is required to be filed must certify this failure to the appointing power. Upon the filing of a complaint alleging the failure of a county officer or constable to enter into an official bond as required by law, the circuit court clerk or the clerk and master having jurisdiction issues a summons which is served, together with a copy of the complaint, upon the county officer or constable in accordance with the Tennessee Rules of Civil Procedure. T.C.A. § 8-19-205. If the official fails or refuses to execute the required bond after receiving a copy of the complaint and a hearing, the court will enter a judgment declaring the office vacant, and the vacancy will be filled according to law. T.C.A. § 8-19-206. In addition, any officer required by law to give bond who performs any official act before the bond is approved and filed as required is guilty of a misdemeanor. T.C.A. § 8-19-119.

County officials must enter into a new bond at the beginning of each term. If the original of any bond is lost or destroyed, the record of the bond will be considered the original and suit may be instituted on the recorded bond. T.C.A. § 8-19-105. The county pays the premiums for official bonds and registration fees of county officials and employees. T.C.A. § 8-19-106. The constable pays all of the costs of obtaining and recording the official bond for his or her office. T.C.A. § 8-10-106.

Compensation

Amounts. There are specific statutes regarding compensation for each office which will be discussed later in this chapter. In general, though, statutes prescribe salaries according to county population classes for many officials. The General Assembly has reconfigured the county classification scheme, setting out sixteen population classes for the purpose of determining the compensation of county officers. T.C.A. § 8-24-102. This statute provides base salary schedules for three categories of

county officers: (1) “general officers” which include assessors of property, county clerks, clerks of court, trustees, and registers of deeds; (2) sheriffs and chief administrative officers of highway departments; and (3) county executives. Salaries specified in this statute for the county executive, county highway chief administrative officer, assessor of property are minimums which may be increased by the county legislative body. The remaining constitutional officers (except for the sheriff who may receive extra compensation for ex officio duties as workhouse superintendent) must receive the amount specified by statute; and these specified salaries cannot be raised or lowered except through subsequent legislation. The salaries of the general officers listed above and the minimum salaries for the county executive, sheriff, chief administrative officer of the county highway department, and assessor of property are adjusted annually on July 1 by a dollar amount equal to the average annualized increase in state employee’s compensation during the prior fiscal year multiplied by the compensation established for the county officials of the county with the median population of all counties, except that in no year can the adjustment exceed seven percent (7%). The average annualized general increase in state employee’s compensation for purposes of calculating the adjustment in salary for county officials means the average increase in base salary plus the percentage increase from retirement benefits, longevity benefits, deferred compensation benefits and other similar benefits, but not including health insurance benefits. These adjustments are calculated and certified by May 1 of each year by the Commissioner of Finance and Administration. T.C.A. § 8-24-102.

Full time county officials, not including general sessions judges, that complete all levels of the county officials certificate training program administered by the University of Tennessee’s Center for Government Training (CGT) and become a “Certified Public Administrator” may receive from state appropriated funds an annual incentive payment starting in July, 1998 at \$375 and increasing yearly by the same amount up to a maximum of \$1500. To continue receiving these payments, these certified county officials must take continuing education courses as prescribed by CGT. If an officer receives incentive pay from other professional development programs then such amounts will be offset so that no official receives more than \$1500 of incentive pay per year. These amounts are also subject to annual appropriations from the General Assembly. County legislative bodies may also appropriate additional amounts as incentive payments to county officials and employees who have become a “Certified Public Administrator”. Educational incentive pay received by any official does not affect the calculations of compensation for officials provided in other statutes. T.C.A. § 5-1-310.

A separate statute, T.C.A. § 2-12-208, provides for the compensation of certified administrators of elections, whose salaries are based county population classifications and on a percentage of the salary of the assessor of property. The salary specified by statute for the certified administrator of elections is a minimum which may be increased by the county legislative body. Similarly, the compensation set by statute for county commissioners is a minimum which may be increased by the county legislative body. T.C.A. § 5-5-107. The General Assembly has also specified an exact salary for general sessions judges (including annual cost of living adjustments according to the statutory formula), which cannot be increased or decreased during the judge's term of office, not even by the General Assembly, and over which the county commission has no control.

Fee System or Salary System. Most of the general officers, as well as the sheriff, receive fees from the public for services they perform; for this reason these officials are sometimes referred to as the “fee officials.” There are two methods of accounting for the fees of these officers. The first and oldest is the “fee system.” Under this system each official remits to the trustee quarterly all of the fees

and charges collected by the official in excess of expenses for the following items: the salaries of the official's deputies and assistants, the necessary expenses of the office, and the official's salary as established by statute. T.C.A. § 8-22-104. The official is also authorized to maintain a reserve in an amount equal to three times the salaries of the official, deputies, and assistants. If the fees are insufficient to pay the regular expenses of the office, including the statutory salary of the official and the salaries of the deputies and assistants, then the deficit is to be paid out of county general funds. T.C.A. § 8-24-107. Excess fees are placed in the county general fund as a source of county revenue.

The county commission is authorized to adopt an alternative system for the fee officials, although the sheriff is always under this alternative system. T.C.A. § 8-24-103. This system can be adopted for some or all of the officials. T.C.A. § 8-22-104. Under this method, the official pays over to the trustee all of the fees, commissions, and charges collected by the office on a monthly basis. The county commission must, in return, authorize the trustee to pay the official's salary, the salaries of the deputies and assistants, and the authorized expenses of the office. These salaries and other proper costs of the office are included in the budget and must be paid even if the fees are insufficient to cover them.

Deputies and Assistants. County “fee officials” must have authority other than the county budget resolution before they can hire employees. This authority may come directly from statute, by court order, or through a contract called a letter of agreement. T.C.A. § 8-20-101. Although under former law only departments under the salary system were authorized to execute letters of agreement, this authority now includes all county fee officers. T.C.A. § 8-20-101. If the county official agrees with the amount appropriated for deputies and assistants which as set forth in the budget adopted by the county legislative body, a court order is not necessary. Instead of filing a petition, the official can enter into a letter of agreement with the county executive, using a form prepared by the state comptroller, which is then filed with the court. T.C.A. § 8-20-101. If a salary suit is necessary, the county executive is named as defendant, and is required to file an answer within five days after service of the petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants. T.C.A. § 8-20-102.

Constitutional Offices

Constitutional officials include the county executive, members of the county legislative body, sheriff, trustee, register, county clerk and assessor of property. However, a county with a consolidated city-county government is not required to have a county executive. The legislature determines the qualifications and duties of each office. TENN. CONST., art. VII, § 1. The duties of these officers in a county with a consolidated city-county government is specified in the charter.

County Executive. All Tennessee counties that do not have a consolidated city-county form of government must have an elected executive, who is referred to as county executive or another appropriate name designated by private act. T.C.A. § 5-6-101. In counties with a county charter form of government, the name or title of the executive is specified in the charter. T.C.A. § 5-1-210(6).

Requirements. The county executive, who serves a four-year-term, must be a qualified voter of the county, at least twenty-five years old, and a county resident for one year prior to filing a nominating petition for election. T.C.A. § 5-6-104. After election, the executive must take an oath of office and execute a bond in the amount of \$25,000 (in counties with a population of less than 15,000) or \$50,000 (in counties with a population of 15,000 or more), although the legislative body may require a greater amount. T.C.A. § 5-6-109.

Compensation. The position is full-time, except in counties where the voters have determined by referendum that the workload does not necessitate a full-time executive. T.C.A. § 5-6-105. A minimum salary, determined by population class, is set by the General Assembly (T.C.A. § 8-24-102), although the legislative body may increase that amount. T.C.A. § 8-24-114. However, the compensation for the county executive must be at least 5% greater than the maximum salary payable to any other constitutional officer. T.C.A. § 8-24-102(g). As the sheriff is the next most highly compensated constitutional officer, the county executive's compensation must be at least 5% greater than the sheriff's salary.

Vacancies. Vacancies in the office of county executive are filled by the legislative body, and the appointee serves until a successor is elected at the next general election. T.C.A. § 5-1-104. Furthermore, a vacancy in the office of county executive is temporarily filled by the chairperson of the county legislative body (or the chairperson pro tempore in circumstances where the county executive had been the chairperson) as interim county executive during the time between the beginning of the vacancy and the appointment of a successor. T.C.A. § 5-5-103(i). If a county executive is incapacitated or absent from the job for more than twenty-one days, the legislative body must appoint the chairperson of the legislative body to serve as acting county executive until the disability or absence is removed. T.C.A. § 5-5-103(g).

Powers and Duties. The county executive is the chief executive officer of the county, and has the powers and duties previously exercised by the county judge, except judicial functions. T.C.A. § 5-6-106. The county executive serves as a nonvoting, ex-officio member of the legislative body. The county executive or the county executive's representative also serves as a nonvoting, ex officio member of each committee of the legislative body, except as provided by law or by the legislative body. T.C.A. § 5-6-106.

The county executive may be elected chairperson of the legislative body. A county executive who serves as chair of the legislative body may cast a vote in the event of a tie. T.C.A. § 5-5-109. However, if the county executive becomes chair, the executive's veto power is forfeited. T.C.A. § 5-5-103. Otherwise, the county executive has veto power over legislative resolutions (not administrative or appellate resolutions) adopted by the legislative body. When a resolution is adopted by the legislative body, it should be submitted to the county executive. Each resolution must be signed, vetoed, or allowed to become effective without the county executive's signature. If a resolution is signed by the county executive, it becomes effective immediately or at a later date specified in the resolution. If the county executive vetoes the resolution, he or she must return the resolution to the legislative body for action on the veto, and the resolution becomes effective only upon subsequent passage by a majority of all legislative body members. Such passage must take place within twenty days of receiving the county executive's veto or at the legislative body's next regular meeting, whichever is later. If the county executive does not sign or veto a resolution or report the

executive's action to the legislative body within ten days after the resolution is submitted to him or her, the resolution becomes effective without the executive's signature after ten days or at a later date if the resolution so provides. T.C.A. § 5-6-107.

The county executive is the chief financial officer and has the care and custody of all county property, unless it is placed with another officer. T.C.A. § 5-6-108. If there is no county attorney, the executive may employ or retain counsel. T.C.A. § 5-6-112. The executive also appoints county board and commission members and county department heads, unless otherwise provided by law (which is usually the case). These appointees are subject to confirmation by the legislative body. T.C.A. § 5-6-106(c). The executive may employ clerical assistants needed in the performance of his or her duties and set their compensation within the amount appropriated for that purpose by the county legislative body. T.C.A. §§ 5-6-116.

The county executive has other duties and interacts with other county officials in almost every area of local administration. The executive's role in tax collection, county penal administration, investment of county funds, county health, and care for the poor, among other topics, will be discussed in other sections.

County Commissioners. The county legislative body (otherwise entitled the board of county commissioners or county commission) is composed of not less than nine nor more than twenty-five members elected from county districts determined by the legislative body. T.C.A. §§ 5-5-102, 5-5-108. These districts must be apportioned on the basis of population at least every ten years so that each member represents substantially the same number of people. T.C.A. § 5-1-111. No more than three members can be elected from the same district. T.C.A. § 5-5-102. A county with a consolidated city-county government is exempt from these requirements. TENN. CONST., art. VII, § 1.

Requirements. County commissioners are elected in the regular August election for a four-year term which begins September 1. County commissioners must reside within and be a qualified voter of the district represented. T.C.A. § 5-5-102. County employees otherwise qualified to serve may hold office as a legislative body member. T.C.A. § 5-5-102. However, no person elected or appointed as county executive, sheriff, trustee, register, county clerk, assessor of property, or any other countywide office filled by popular vote or by the legislative body may be nominated for or elected to the legislative body. T.C.A. § 5-5-102. If a legislative body member accepts the nomination as a candidate for the office of county executive, sheriff, trustee, register, county clerk, superintendent of roads, superintendent of schools, circuit court clerk, assessor of property, general sessions judge, or General Assembly member when the office is being filled by the legislative body, that member becomes disqualified to continue in office and a vacancy in the county commission will automatically exist. T.C.A. § 5-5-102.

Meetings. The legislative body establishes the time, date, and place of its regular meetings, which must be held at least four times each year. T.C.A. § 5-5-104. The county executive or a majority of the legislative body members may call a special meeting upon five days notice to the members through publication in a newspaper of general circulation in the county or by personal notice. T.C.A. §§ 5-5-104, 5-5-105. Additionally, public notice of the meeting is required by the Open Meetings (Sunshine) Law, T.C.A. § 8-44-101 *et seq.* If a special meeting is held for the purpose of filling a

vacancy, ten days notice must be provided to county commission members, and one week public notice must be published in a newspaper of general circulation in the county. T.C.A. §§ 5-5-113, 5-5-114. Every member has a duty to attend each session of the body. T.C.A. § 5-5-106. A majority of the membership constitutes a quorum for transacting all business before the county legislative body. A majority of the full membership, not merely a majority of the quorum, is required to pass almost all measures. T.C.A. §§ 5-5-108; 5-5-109. (See Appendix for a full discussion and table of votes required for a majority.)

Compensation. The compensation of legislative body members is fixed by resolution of the body, although the General Assembly establishes the minimum compensation. T.C.A. § 5-5-107. Currently, the legislative body may not set the compensation of its members less than the following daily amounts:

Third class	\$35	Sixth class	\$20
Fourth class	\$30	Seventh class	\$20
Fifth class	\$25	Eighth class	\$20

These county classes are set by population and are delineated in T.C.A. § 8-24-101.

The amount provided above, or a greater amount provided by resolution duly adopted by the legislative body, must be paid to the members for each day's attendance at meetings of the county commission; however, a or greater amount may be provided by resolution adopted by the legislative body as a stated salary per month. The compensation fixed by the legislative body for attending authorized committee meetings is one half the daily compensation paid for attending regular sessions. T.C.A. § 5-5-107. Special provisions exist for the state's largest counties: members of legislative bodies in counties with a population of 100,000 to 600,000 must receive at least \$25,000 per year. T.C.A. § 8-24-115. In Hamilton County, the legislative body was statutorily required to set the compensation of its members by a two-thirds vote, to become effective upon July 1, 1999. Each year on July 1 the compensation is adjusted to reflect the same percentage increase received by the county executive for that year. T.C.A. § 5-5-107.

Vacancies. Vacancies in the legislative body are filled by the remaining legislative body members; the person appointed serves until a successor is elected at the next general election. T.C.A. § 5-1-104. As discussed in the following chapter, special notice provisions apply. T.C.A. §§ 5-5-113, 5-5-114.

Duties. The county legislative body is the basic legislative unit of the county, and is vested by statute with various powers to carry out this role. Although these powers allow some discretion in the operation of the county, the general rule is that any action of the commission must be authorized by statute or constitution. Counties do not have general ordinance powers, as do cities, but must have explicit legislative authorization before they may act. The county commission is the agent of the county in entering into contracts, approving settlements of lawsuits and many other actions, although limitations on these powers are numerous. When statutes vest counties with particular authority, it is the county commission that acts to use the authority. One of the most important functions of the county legislative body is the formulation of the budget and the appropriation of funds for other county departments. The role of the legislative body in taxation, budgets and appropriations, roads

and highways, education, county buildings and property, county finances and other areas will be discussed in other sections of the handbook.

Assessor of Property. For purposes of ad valorem taxation of property, the assessor of property places a value on commercial, industrial, residential, and farm land. T.C.A. §§ 67-5-102, 67-5-103. The assessor must assess and place a value on all county property for taxation purposes by May 20 of each year; the date of valuation is January 1. T.C.A. § 67-5-504. The assessor of property is elected to a four year term. T.C.A. § 67-1-502.

Compensation. The assessor of property is listed as one of the “general officers” who must receive at least the amount listed by statute. T.C.A. § 8-24-102. However, unlike the salaries of most of the other general officers, this amount is a minimum for the assessor; the legislative body may provide a greater amount. T.C.A. § 67-1-508. The state board of equalization prescribes educational and training courses to be taken by assessors and their deputies and provides certification to those who complete these courses. T.C.A. § 67-1-509. Assessors may be additionally compensated by the board if necessary course work and training has been completed and the assessor has been designated as a “Certified Assessment Evaluator” by the International Association of Assessing Officers. The additional compensation ranges from \$750 to \$1,500 annually. T.C.A. § 67-1-508.

Duties. The assessor’s duties include two basic functions: appraisal and assessment. After the assessor has determined the appraised value of property in the county, the assessed value is calculated. This is done by applying the classification percentage, as stated in the Tennessee Constitution, to the appraised value of the property. TENN. CONST., art. II, § 28; T.C.A. § 67-5-901. This assessed amount is taxed according to the rate established by the county legislative body. In order to keep appraisals current, reappraisals are done on a four, five or six year cycle. In those counties using a six year cycle, updating is done in the third year of the cycle. The counties with a four or five year cycle do no updating or indexing to reflect current value as do those using a six year cycle. However, in order to utilize the alternative five year cycle, the assessor and the county legislative body must agree to its use. Assessors are also required to maintain the property maps of the county. T.C.A. § 67-5-1601.

Oath of Office. Each assessor and deputy assessor must take and subscribe to a special oath of office. The oath, which is different from that of other county officials, is to be attached to and filed with the bond in the amount of \$10,000 in the county clerk's office. The oath reads as follows:

“I, _____, assessor of property (or deputy assessor) of the county of _____, state of Tennessee, do solemnly swear (or affirm) that I will appraise, classify, and assess all taxable property of the county of _____, according to the Constitution of Tennessee and the laws of the state; that I will truly report all persons who fail or refuse to list their taxable property or who have to my knowledge returned a fraudulent list; and that I will faithfully, impartially and honestly discharge my duties as assessor of property according to the law, to the best of my knowledge and ability, without fear, favor or affection, so help me God.

Signed _____
Assessor of Property

Subscribed to and sworn before me this ____ day of _____, 19 ____.”

T.C.A. §§ 67-1-505, 67-1-507.

Vacancies. As with most other county offices, vacancies in the office of the assessor are filled by the county legislative body. The appointee will hold office until a successor is elected at the first regular August election after the vacancy. The new assessor holds office until the close of the term for which the predecessor was elected. T.C.A. § 67-1-504. If the office becomes vacant due to death, resignation, or removal, the assessor's duties must be temporarily discharged by the chief deputy, or by the deputy designated in writing as the temporary successor by the assessor, until a successor is elected or appointed and qualified according to law. § 67-1-504.

Appointment of Deputies. Unlike many other officials who obtain authority for deputies and assistants through court order or letter of agreement, the assessor is authorized by statute to appoint one deputy for each 4,500 parcels of property over and above the first 4,500 parcels in the county. Each deputy has the same power, duties, and liabilities as the assessor concerning the appraisal, classification, and assessment of property. If an assessor does not have enough parcels of property to qualify for a deputy, a secretary may be employed to assist in the operation of the office, with the approval of the legislative body. T.C.A. § 67-1-506.

County Clerk. The county clerk, formerly the county court clerk, is elected to a four year term. T.C.A. § 18-6-101. The clerk must post either a \$50,000 bond (in counties with a population greater than 15,000) or a \$25,000 bond (in counties with a population less than 15,000). T.C.A. § 18-2-201.

Salaries and Deputies. As discussed above, county clerks receive an annual salary in the amount listed in T.C.A. § 8-24-102. The county clerk may operate under the fee system (discussed earlier in this chapter), maintaining a fee account to pay salaries and other expenses and remitting excess fees quarterly to the county general fund; alternatively, the county legislative body may require the monthly turnover of all fees and authorize all salaries and office expenses to be paid from the general fund. T.C.A. § 8-22-104. Fees for the various duties performed by the county clerk are found in T.C.A. §§ 8-21-701 and 8-21-401. The county clerk may receive authority to employ deputies and assistants through a letter of agreement or court order as explained earlier in this chapter. The deputy's oath of office is the same as that of the county clerk; it must be certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112.

Vacancies. Vacancies in the county clerk's office are filled by the county legislative body in the manner discussed in the following chapter. T.C.A. §§ 5-1-104, 18-6-101. If the office becomes vacant due to death, resignation, or removal, the county clerk's duties are temporarily discharged by the chief deputy, or by the deputy designated as the temporary successor by the county clerk in writing, until a successor county clerk is elected or appointed and qualified according to law. T.C.A. § 18-6-115.

Duties. The county clerk performs a variety of different functions: (1) keeping the official records of the legislative body; (2) keeping a record of all appropriations and allowances made by the legislative body and all claims chargeable against the county; (3) collecting certain local and state taxes (local wheel taxes, local hotel/motel taxes, wholesale beer tax, business taxes, and vehicle

registration fees, for example), T.C.A. § 18-6-105; and (4) probating or acknowledging deeds and other instruments that are entitled to registration by law. T.C.A. § 18-6-108. Some county clerks continue to act as probate clerk and/or juvenile court clerk. These duties are governed by private acts as well as general law. County clerks may administer oaths and take affidavits. T.C.A. § 18-6-114. The county clerk also issues marriage licenses. The clerk records the names and date of the license and then, after the ceremony is performed, records the date of the marriage. The returned license is filed in this office as a permanent record. T.C.A. § 18-6-109.

Conflict of Interest. Whenever the county clerk is disqualified because of interest or relationship from the performance an official act required by law, the county executive or appropriate judge must perform the act. T.C.A. § 18-6-112.

Register of Deeds. The register enters into a four year term of office after taking the prescribed oath and posting the required bond in the amount of \$15,000 (in counties of less than 15,000), \$25,000 (in counties with 15,000 or more), or in a greater amount required by the county legislative body. T.C.A. §§ 8-13-101, 8-13-102.

Salaries and Deputies. As discussed above, registers receive an annual salary in the amount listed in T.C.A. § 8-24-102. The register may operate under the fee system (discussed earlier in this chapter), maintaining a fee account to pay salaries and other expenses and remitting excess fees quarterly to the county general fund; alternatively, the county legislative body may require the monthly turnover of all fees and authorize all salaries and office expenses to be paid from the general fund. T.C.A. § 8-22-104. Fees for the various duties performed by the register are found primarily in T.C.A. § 8-21-1001, although other fees are found with the statutes relating to the subject matter as, for example, U.C.C. instruments in Title 47, Chapter 9. The register may receive authority to employ deputies and assistants through a letter of agreement or court order as explained earlier in this chapter.

Vacancies. Vacancies in the register's office are filled by the county legislative body in the manner discussed in the following chapter. T.C.A. § 5-1-104. If the office becomes vacant due to death, resignation, or removal, the register's duties may be temporarily discharged by the deputy designated as the temporary successor by the register in writing, until the vacancy is filled by the legislative body. T.C.A. § 18-6-115.

Requirements and Duties. The primary function of the register is to make and preserve a record of instruments required or allowed by law to be filed or recorded, including but not limited to deeds, powers of attorney, mortgages, liens, contracts, plats, leases, judgments, wills, court orders, military discharges, papers under the Uniform Commercial Code, and other types of instruments. T.C.A. § 66-24-101. The records provide public notice of property ownership, liens, and contracts, and other transactions that affect the public interest. The register's office is in the county seat, and the records and papers must remain in the office at all times. T.C.A. §§ 8-13-106, 8-13-107.

The register has specific directions on how to index, record, and maintain the records. T.C.A. § 8-13-108. The register must perform the following functions: (1) require specific information on instruments registered in the office; (2) perform the assigned tasks in a diligent manner, since the notice of a recorded instrument may affect who holds legal title to property and who has priority in

liens against property; (3) carefully place the time of receipt of instruments into the notebook, record the instruments in the correct book, and index the instrument properly, T.C.A. § 8-13-108; (4) keep accurate records of the fees, commissions, and taxes collected as well as of office expenses; (5) make reports on the fees, commissions, and expenses to the county; and (6) make reports on the taxes collected to the revenue department. T.C.A. § 67-4-409. The register's fees vary according to the type and length of the instrument. T.C.A. § 8-21-1001. Fee officials, including registers, must collect all fees to which they are entitled. T.C.A. § 8-22-102.

The register is responsible for collecting “transfer” and “mortgage” taxes. T.C.A. § 67-4-409. With some statutory exceptions, the register must collect a tax on the transfer of all interests in real estate, and the “mortgage” tax on recording instruments which evidence an indebtedness. T.C.A. § 67-4-409.

Sheriff. The sheriff and deputies are the conservators of the peace in the county and may enforce the civil and criminal laws. They also serve legal process, take custody of the jail or workhouse and the prisoners, and may depute any citizen of the county to assist in carrying out the duties of the office. T.C.A. §§ 8-8-201, 8-8-212, 8-8-213.

Requirements. The sheriff is elected to a four-year term and must have the following qualifications:

- (1) United States citizen.
- (2) twenty-five years of age prior to the qualifying date.
- (3) a qualified voter of the county.
- (4) a high school graduate or equivalent.
- (5) no convictions, guilty plea or nolo contendere to any felony charge or any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances, or a misdemeanor crime of domestic violence so long as the violation involves an offense that consists of moral turpitude.
- (6) be fingerprinted under the direction of the Tennessee Bureau of Investigation (TBI) and have the TBI make a search of local, state and federal fingerprint files for any criminal record.
- (7) not have been released from the armed forces of the United States with a dishonorable or bad conduct discharge, or as a consequence of conviction at court martial for either state or federal offenses.
- (8) a certificate by a qualified professional in the psychiatric or psychological fields stating that the candidate is free of all apparent mental disorders as described in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition, of the American Psychiatric Association, or its successor.
- (9) hold a current and valid peace officer certification as issued by the Tennessee POST commission within twelve months of qualification for the election of the sheriff, however this qualification is waived for first time elected sheriffs who must enroll in a recruit training program within six months after taking office and be POST certified in order to qualify for re-election.
- (10) not a member of the General Assembly.

T.C.A. §§ 8-8-101, 8-8-102.

Oath of Office and Bond. In addition to filing the required bond and the usual oath of office, a sheriff must “take an oath that [he or she] has not promised or given, nor will give, any fee, gift, gratuity, or reward for the office or for aid in procuring such office, that [he or she] will not take any fee, gift, or bribe, or gratuity for returning any person as a juror or for making any false return of any process, and that [he or she] will faithfully execute the office of sheriff to the best of [his or her] knowledge and ability agreeably to law.” T.C.A. § 8-8-104. Sheriff’s deputies must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff’s. T.C.A. § 8-18-112.

Salaries and Deputies. The sheriff receives a statutory compensation amount according to county population class as explained earlier. T.C.A. § 8-24-102. The compensation table in the statute provides for the sheriff to receive 5% more than the general officers. The sheriff may receive additional compensation for serving as superintendent of the workhouse. T.C.A. § 8-24-104. However, if the sheriff is not certified by the POST commission at the time of election, then the sheriff’s salary is reduced during each year the sheriff is not so certified, by 15% the first year, 20% the second year, 25% the third year, and 30% the fourth year, subject to the salary being raised to the standard amount the next month after being certified by the POST commission.

Although the sheriff and deputies collect fees for services performed, this office is always on the salary system rather than the fee system, turning over fees and other revenues monthly to the trustee and receiving appropriations for salaries and expenses. As with many other county officers, the sheriff may employ deputies and other staff under a letter of agreement or a court order. These costs are paid out of the county general fund rather than out of fees to help insure the fair and impartial administration of law enforcement duties. T.C.A. § 8-24-103. The county legislative body may not adopt a budget which reduces the salaries and number of employees of the sheriff’s department without the sheriff’s consent. T.C.A. § 8-20-120. If the legislative body fails to appropriate any salary expenditure necessary to discharge the sheriff’s duties, the sheriff may seek a writ of mandamus to compel such appropriation. T.C.A. § 8-20-120. Any deputy employed after July 1, 1981, and any special or part-time deputy employed after January 1, 1989, must meet certain minimum standards similar to those required for sheriffs. T.C.A. § 38-8-106.

Vacancies. If the sheriff’s office becomes vacant due to death, resignation, incapacity, or other causes, the duties are temporarily discharged by the chief deputy, administrative assistant, or other highest ranking member of the sheriff’s office, until the sheriff is able to reassume office or until the legislative body appoints a successor. T.C.A. §§ 8-8-106, 8-8-107.

County Trustee. As with most other county officials, the trustee is elected to serve a four year term. T.C.A. § 8-11-101.

Surety Bonds. The amount of the trustee’s bond is determined by the amount of revenues handled by the trustee during the last fiscal year audited by the state comptroller, or from the last approved audit prepared by a public accountant. T.C.A. § 8-11-103. If the official bond of the county trustee is executed by a surety company authorized to transact business in the state of Tennessee, the minimum amount of the bond is based on revenues as follows:

- (1) Less than \$50,000 -- a base bond of \$5,000.
- (2) From \$50,000 to \$500,000 -- an amount equal to 10% of the funds collected by the office.
- (3) 5% of the excess of \$500,000 to \$1,000,000 shall be added.
- (4) 3% of the excess of \$1,000,000 to \$3,000,000 shall be added.
- (5) 2% of the excess of \$3,000,000 shall be added.

Amounts in items two through five are cumulative. If the official bond of a county trustee is executed by personal sureties, the minimum amount of the bond shall be based on revenues as follows:

- (1) Less than \$50,000 -- a base bond of \$5,000.
- (2) From \$50,000 to \$500,000 -- an amount equal to 20% of the funds collected by the office.
- (3) 10% of the excess of \$500,000 to \$1,000,000 shall be added.
- (4) 6% of the excess of \$1,000,000 to \$3,000,000 shall be added.
- (5) 4% of the excess of \$3,000,000 shall be added.

Amounts indicated in items two through five are cumulative. The amounts stated above are only minimums; the county legislative body may require the trustee to execute a bond in a higher amount. T.C.A. §§ 8-11-103, 8-11-102.

Trustee's Oath. In addition to the usual oath, the trustee must take an additional oath which is set out in T.C.A. § 67-5-1901, stating:

I do solemnly swear that I will faithfully collect and account for all taxes for my county, or cause the same to be done, according to law, and that I will use all lawful means in my power to find out and assess such property as may not have been assessed for taxation in my county, and return a list of the same on settlement.

Trustee's deputies must take the same oath of office as the trustee, and the oath is certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112.

Salaries and Deputies. The trustee is among the general officers whose compensation is statutorily set according to county population class. T.C.A. § 8-24-102. As with most other fee officials, the trustee operates either under the fee or the salary system, as determined by the county legislative body. T.C.A. § 8-24-104. The trustee may hire employees through a court order or letter of agreement. T.C.A. § 8-20-101. (See previous discussion regarding compensation, deputies, and the salary and fee systems.)

Vacancies. If there is a vacancy in the office of trustee, the chief deputy, or another deputy designated in writing by the trustee, temporarily carries out the trustee's duties until a replacement is chosen by the county legislative body. T.C.A. §§ 8-11-111, 5-1-104.

Duties. The trustee serves three primary functions: (1) collecting all county property taxes; (2) keeping a fair regular account of all money received; and (3) investing temporarily idle county funds. T.C.A. § 8-11-104. In addition, the trustee disburses sales tax revenues and may collect municipal

property taxes and other state and local taxes. The trustee must keep a detailed account of these transactions.

Clerks of Chancery, Circuit, Criminal and General Sessions Courts. In most counties, the circuit court has both civil and criminal jurisdiction and uses only one clerk. Often, the circuit clerk is also the general sessions court clerk. T.C.A. § 16-15-301. In any county in which a separate general sessions clerk is created by private act, the clerk serves in accordance with the private act. T.C.A. § 16-15-301.

Requirements and Duties. Clerks must attend court and perform clerical functions. T.C.A. § 18-1-101. The clerk and master is the clerk of the chancery court and is appointed by the chancellor for a six year term. T.C.A. § 18-5-101. Other clerks, including those of special courts, are elected to a four year term. T.C.A. § 18-4-101. The clerk must reside in the county where the court is held and maintain an office in the county seat. T.C.A. § 18-1-102. A clerk must fulfill the general state law requirements to hold office. T.C.A. § 8-18-101.

Clerks serve an important role in the operation of the Tennessee court system, a role which is outlined generally in Title 18 of the *Tennessee Code Annotated*. Some of the clerks' duties include the following: (1) attending each court session with all the papers for the cases on the docket; (2) administering oaths to parties and witnesses who testify; (3) keeping minutes of the court in a well-bound book or on a legible computer printout, if the clerk complies with statutory requirements for computer records; (4) maintaining the rule docket and an execution docket in which all court judgments or decrees are entered in order of rendition and all receipts and disbursements in a case are entered; (5) maintaining indexes for all books and dockets that are kept by the office; and (6) investing funds pursuant to T.C.A. § 18-5-106. T.C.A. §§ 18-5-102, 18-1-105.

General sessions clerks have similar duties: (1) retaining, preserving, and filing in order all papers in civil cases; (2) transmitting papers when an appeal has been taken to circuit court; and (4) keeping in a well-bound book a docket of all judgments and executions. T.C.A. § 16-15-303.

Oaths and Bonds. As with other officials, clerks and their deputies must take an oath of office. T.C.A. §§ 18-1-103, 18-1-104. Every clerk must enter into a bond of \$25,000 (in counties with less than 15,000 population) and \$50,000 (in counties with a population of 15,000 or more), or the court may require a greater bond. T.C.A. § 18-2-101.

Salaries and Deputies. As “general officers,” court clerks receive an annual salary in the amount listed in T.C.A. § 8-24-102. Like other fee officials, clerks collect fees for services they perform; they must keep complete records of these and file a monthly itemized statement with the county executive. T.C.A. § 8-22-104. A clerk’s office may be operated on the fee system or the salary system, according to the decision of the county legislative body. T.C.A. § 8-24-104. A clerk may receive authorization for employees either through a letter of agreement or court order. T.C.A. § 8-20-101. If a clerk files a petition in the court in which the clerk serves, the case is to be transferred to another court upon the request of any party. T.C.A. § 8-20-106. See the beginning of this chapter for a discussion of compensation, the fee and salary systems, and appointment of deputies.

Vacancies. Vacancies in offices of the elected clerks are filled by the county legislative body as described in the following chapter. T.C.A. § 5-1-104. If there is a vacancy in the office of clerk and master, a new clerk is appointed by the chancellor for another six year term, beginning with the date of the appointment. T.C.A. § 18-5-501. In case of death of any clerk, the deputy holds office until the vacancy is filled. T.C.A. § 18-1-401.

Statutory Offices

Chief Administrative Officer (“CAO”) for Highways and Roads. Under the Tennessee County Uniform Highway Law (“CUHL”), the CAO has oversight of the county highway department and may be called by such titles as the county road superintendent, county road supervisor, director of public works, county engineer, or a similar name. The CAO has general control over the construction and maintenance of the county roads. T.C.A. §§ 54-7-103, 54-7-109. However, a few counties still have elected road commissions which exercise some control over these functions. T.C.A. § 54-7-109. The CUHL is applicable in all counties except Shelby, Davidson, Knox, and Hamilton. T.C.A. § 54-7-102. Some counties have also attempted to “opt out” of portions of the CUHL by narrow population classes applicable to individual counties, even though the Attorney General has stated that such exclusions are constitutionally suspect. Counties not under the uniform law are governed by private acts or charters which generally provide the qualifications, duties, and compensation of the chief administrative officer.

Qualifications. The CAO may be elected or appointed to a four-year term pursuant to a general law or private act, although some counties are excluded from the term of office provision by narrow population class. T.C.A. §§ 54-7-103, 54-7-105. In addition to the general qualifications to hold office, the CAO must meet the following requirements:

1. High school education or general equivalency diploma (GED) recognized by the Tennessee State Board of Education; and
2. At least one of the following:
 - (a) Graduation from an accredited school of engineering, with at least two years experience in highway construction or maintenance, or a license to practice engineering in Tennessee; or
 - (b) Four years experience in a supervisory capacity in highway construction or maintenance; or
 - (c) A combination of education and experience equivalent to either of the above, as evidenced by affidavits filed with the appointing authority, or with the state coordinator of elections when the chief administrator is an elected official.

T.C.A. § 54-7-104.

Candidates for election must file affidavits and other evidence supporting the candidate’s qualifications with the Tennessee highway officials certification board at least fourteen days prior to

the qualifying deadline. A certificate of qualification from the highway officials certification board must be filed with the candidate's qualifying petition prior to the qualifying deadline before the candidate's name is placed on the ballot. Also, candidates for appointment to the office of CAO must file evidence satisfactory to the board that they meet the qualifications to hold the office prior to the appointment. T.C.A. § 54-7-104. Some counties are excluded from the qualification requirements by narrow population classification. These narrow population classifications are constitutionally suspect. Davidson County (metropolitan government and over 100,000 population) is also excluded. In addition, these requirements do not apply to an incumbent highway administrator in office on April 5, 1974, or to any candidate for the office qualifying for and elected to the office in 1974, if that person remains in office. T.C.A. § 54-7-104. If the CAO is appointed, a private act governs the method of appointment. T.C.A. § 54-7-103. Except in those counties excluded from the CUHL, counties cannot add additional qualifications for the CAO by private act or resolution of the county legislative body.

Salaries and Employees. The chief administrative officer must receive at least the minimum salary stated under T.C.A. 8-24-102. If two or more CAO's are elected or appointed with equal duties, the compensation is divided equally between them. T.C.A. § 54-7-106. The legislative body may at any time increase or decrease the salary of the CAO as long as it is maintained at or above the minimum salary level. T.C.A. § 54-7-106.

The CUHL clearly places authority over county highway department personnel with the chief administrative officer who may employ personnel and determine the number of employees (within the limits of the available budget), and establish personnel policies, work hours, job classifications, and wages. T.C.A. § 54-7-109. The compensation should be consistent with compensation paid for similar services in the county and surrounding area. T.C.A. § 54-7-109.

Oath of Office and Bond. Before taking office the CAO must take and subscribe to the oath of office; the CAO must also enter into a bond of \$100,000 or a greater amount if the county legislative body so requires. T.C.A. § 54-7-108. This bond, payable to the state, is to indemnify the county against the loss of any funds occurring as a result of unlawful or dishonest acts. T.C.A. § 54-4-103.

Duties. Except in those counties with popularly elected road commissions which exercise general control by private act, the CAO is the head of the county highway department and has general control over the location, relocation, construction, reconstruction, repair, and maintenance of the county road system including bridges and ferries, except roads and bridges under the supervision of the state department of transportation. T.C.A. § 54-7-109.

The CAO must also perform the following functions: (1) prepare an annual work program which lists projects to be financed under the state-aid highway system program, submitting this report to the county legislative body and the state department of transportation, T.C.A.

§ 54-7-111; (2) make a complete inventory of all machinery, equipment, tools, supplies, and materials and file copies of the inventory with the county legislative body and the county executive, T.C.A. § 54-7-112; (3) file the first inventory within sixty days after taking office, and a revised current inventory annually by September 1 of each year, T.C.A. § 54-7-112; and (4) annually submit a listing of county roads to the county legislative body including changes from the road list submitted the previous year and make recommendations to the county legislative body regarding county road classification. T.C.A. § 54-10-103.

Removal from Office. A CAO may be removed from office under circumstances applicable to other elected county officials; the following chapter discusses these provisions. Particular sections in the CUHL also provide for the removal of highway officials if a state audit indicates an apparent violation of any statute or regulation governing the operation of the county highway department, including but not limited to accounting, budgeting, and purchasing procedures; after an investigation, the district attorney general is directed to bring an ouster action if it is warranted. Any CAO removed from office under this section may not seek the office again in any county. T.C.A. § 54-7-205.

Vacancies. In case of a vacancy in an elected office, a qualified successor is to be chosen by the county legislative body as discussed in the following chapter. T.C.A. §§ 5-1-104, 54-7-107. If the CAO is appointed, the vacancy is filled as provided by private act. Currently, there is no general law which provides for a temporary successor in case of a vacancy.

For additional information regarding the county highway department, see Chapter 11.

Director of Schools. For information on the director of schools (formerly superintendent of education) and the county department of education, see Chapter 12.

County Medical Examiner. The principal function of the medical examiner is to investigate deaths occurring under certain circumstances described by statute and to provide information to law enforcement officials. T.C.A. § 38-7-106 through 38-7-116. The county commission may assign the county coroner's duties to the medical examiner and eliminate the office of coroner. T.C.A. § 8-9-101.

The county medical examiner is appointed by the legislative body from a list of two doctors of medicine or osteopathy nominated by a convention of physicians residing in the county. In counties with a metropolitan form of government, the medical examiner is appointed by the chief executive officer subject to confirmation by the metropolitan council. T.C.A. § 38-7-104. The county legislative body may appoint a medical examiner from another county if it is impossible to obtain acceptance from a physician in the county. If the legislative body fails to certify a medical examiner, the state's chief medical examiner may appoint a medical examiner for the county until the legislative body takes such action. T.C.A. § 38-7-104.

County Coroner. The county legislative body has discretionary authority to create the county coroner's office. If the office is created, the legislative body appoints a coroner for a two-year-term. T.C.A. § 8-9-101. The coroner must take an oath of office and enter into a \$2,500 surety bond. T.C.A. §§ 8-9-103, 8-9-104.

The coroner may hold an inquest upon receiving an affidavit signed by two or more reliable persons stating that a death has occurred and that there is good reason to believe that the death was due to unlawful violence. T.C.A. § 38-5-101 *et seq.* Courts of general sessions also have the power to hold an inquest upon receiving the proper affidavit. T.C.A. § 38-5-103. The coroner may also serve certain process when the sheriff is an interested party, and must make reports of any traffic-related deaths as required by the department of safety. T.C.A. §§ 8-9-106, 55-10-112.

As noted above, the county legislative body may abolish the office of coroner and assign the duties of the coroner to the county medical examiner. T.C.A. § 8-9-101.

Constables. Constables are optional officers. A county legislative body may, by adopting a resolution by two-thirds majority vote at two consecutive meetings, abolish the office of constable for that county or set the term of office for the constable at either two or four years. Any change would not be effective until the end of the current term being served by the constable. T.C.A. § 8-10-101. Also, a county legislative body may, by adopting a resolution by two-thirds majority vote at two consecutive meetings, remove any law enforcement powers exercised by the constables of the county. Unlike the abolition of the office by the county legislative body, the removal of law enforcement powers may take effect with the adoption of the resolution. In addition to these optional procedures, several counties, by population class exceptions, are exempt from portions of the constable law or have abolished the office of constable entirely, so the specific statute should be consulted for provisions applicable to each individual county. T.C.A. § 8-10-101.

Constables are elected from districts established by the legislative body subject to the following limitations: (1) the number of constables elected cannot exceed $\frac{1}{2}$ the number of county commissioners; (2) constables must represent substantially equal populations; and (3) constable districts must be reasonably compact and contiguous and must not overlap. T.C.A. § 8-10-101. Constables must have the following qualifications: (1) twenty-one years old, (2) a qualified voter of the district, (3) ability to read and write, (4) no felony convictions, and (5) no armed forces discharge other than honorable. A candidate must file an affidavit stating that he or she meets these qualifications with the county election commission along with the nominating petition. T.C.A. § 8-10-102. There are also permissive specifications regarding uniforms and car markings. T.C.A. §§ 8-10-119, 8-10-120. Prior to taking office, constables must, at their own expense, enter into a surety bond of not less than \$4,000 nor more than \$8,000, at the legislative body's discretion. T.C.A. § 8-10-106. Constables' duties may be limited to serving civil process or may include peacekeeping duties; the oath of office differs according to the nature of the duties. T.C.A. 8-10-108. The duties of the constable are determined according to the population classification of the particular county under T.C.A. §§ 8-10-108 and 8-10-109 if the county legislative body has not acted to remove law enforcement powers. The legislative body may fill any vacancy by temporary appointment until it is filled by an election. T.C.A. §§ 8-10-104, 8-10-105.

Judicial Commissioners. Judicial commissioners generally have the power to issue arrest warrants, search warrants, and mittimus, to appoint attorneys for indigent defendants, and to set and approve bonds. Legislative bodies in counties with populations less than 200,000 as well as those in metropolitan counties and in a few other counties, have the authority (but are not required) to create the position of judicial commissioner. T.C.A. §§ 40-1-111, 40-5-201. There may be one or more judicial commissioners who are appointed by the legislative body (T.C.A. § 40-1-111) or general sessions judges (T.C.A. §§ 40-1-111, 40-5-201). Usually the county legislative body sets the term of office, although it cannot exceed four years. T.C.A. §§ 40-1-111, 40-5-202. Judicial commissioners take the same general oath of office as other county officials. The salary is set by the county legislative body in most counties, although in metropolitan counties it is set by a majority of the general sessions judges with the approval of the legislative body. T.C.A. §§ 40-1-111, 40-5-203. Salaries are paid from the county general fund, and fees received by judicial commissioners for services performed are paid into this fund. T.C.A. § 40-1-111.

County Surveyors. The legislative body elects the county surveyor at its January session for a four-year-term. T.C.A. § 8-12-101. The surveyor must take an oath of office and enter into a \$2,000 bond. T.C.A. § 8-12-102. The legislative body may fix the compensation of the surveyor, his chain bearers and markers, where the fees are not already established by law. T.C.A. § 8-12-107. The surveyor may appoint two deputies who must take the surveyor's oath of office; appointment takes place before the legislative body. T.C.A. § 8-12-104. The surveyor must maintain all office records in the county seat. T.C.A. § 8-12-103.

COUNTY OFFICIALS/EMPLOYEES MINIMUM BOND*

<u>Official</u>	<u>Minimum Amount of Bond</u>	<u>Code Sections</u>
Accounts and Budget Director	Not less than \$10,000 nor more than \$25,000	T.C.A. § 5-13-103
Assessor of Property	\$10,000	T.C.A. § 67-1-505
Auditor	Determined by county legislative body	T.C.A. § 8-15-102
Circuit Court Clerk	\$50,000 in counties with population greater than 15,000; \$25,000 in counties with population less than 15,000. Courts can require additional bond to cover property in hands of clerk or when the clerk acts as a commissioner or receiver	T.C.A. § 18-2-201
Clerk and Master	Same as circuit court clerk	T.C.A. § 18-2-201
Constable	Not less than \$4,000 nor more than \$8,000	T.C.A. § 8-10-106
Coroner	\$2,500	T.C.A. § 8-9-103
County Clerk	Same as circuit court clerk	T.C.A. § 18-2-201
County Executive	\$50,000 in counties with population greater than 15,000; \$25,000 in counties with population less than 15,000	T.C.A. § 5-6-109
County Surveyor	\$2,000	T.C.A. § 8-12-102
Finance Director	Not less than \$50,000	T.C.A. § 5-21-109
General Sessions Clerk	Same as circuit court clerk	T.C.A. § 18-2-201
Highway Chief Administrator	\$100,000	T.C.A. § 54-7-108
Notaries Public	\$10,000	T.C.A. § 8-16-104

Registers	\$25,000 in counties with population greater than 15,000; \$15,000 in counties with population less than 15,000	T.C.A. § 8-13-103
Director of Schools	\$50,000	T.C.A. § 9-3-301
Sheriff	\$25,000	T.C.A. § 8-8-103
Trustee	Based upon amount of office revenues	T.C.A. §§ 8-11-102, 8-11-103

*The bond amounts listed are only the minimum amounts required by law. Bonds of greater amounts may be required by the approving authority.

CHAPTER 4

VACANCIES, REMOVAL FROM OFFICE AND CONFLICTS OF INTEREST

Vacancies in Office

Vacancies can occur in county offices for a variety of reasons. According to the state constitution, county officials “shall be removed from office for malfeasance or neglect of duty,” as these terms are defined by the legislature. TENN. CONST. art. VII, § 1. Similarly, court clerks may be removed for “malfeasance, incompetency or neglect of duty.” TENN. CONST., art. VI, § 13. According to statute, any of the following results in a vacancy in office:

1. death of the incumbent;
2. resignation, when permitted by law;
3. ceasing to be a resident of the state, district, circuit, or county for which elected or appointed;
4. decision of a competent tribunal, declaring the election or appointment void or the office vacant;
5. an act of the General Assembly abridging the term of office, where it is not fixed by the Constitution;
6. sentencing the incumbent, by any competent tribunal in this or any other state, to the penitentiary, subject to restoration if the judgment is reversed, but not if the incumbent is pardoned; or
7. adjudicating the incumbent insane.

T.C.A. § 8-48-101.

As noted in the preceding chapter, a vacancy also results if an officer fails to satisfy the bond requirement. T.C.A. § 8-19-117.

Ouster. Any county official, except those exclusively and constitutionally removable by other means, may be ousted for any of the following:

1. knowing or willful misconduct in office;
2. knowing or willful neglect of duties required by law;
3. voluntarily intoxication in a public place;
4. gambling; or
5. commission of an act violating any statute if the act involves moral turpitude.

T.C.A. § 8-47-101.

Specific grounds for removal from each office are discussed in the individual county office section in Chapter 3.

Temporary Vacancies

Vacancies Due to Military Service. A temporary vacancy exists when a county official enlists or is inducted into military service, such as the United States Army or any of its branches, the Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, or any other military activity. T.C.A. § 8-48-202. Upon the official's return from military service, he or she is entitled to resume the office for the remainder of the term, if it has not already expired. T.C.A. § 8-48-202. If the official does not return from military service prior to the expiration of the term, a successor is elected in the regular manner prescribed by law. T.C.A. § 8-48-203.

When a county official is inducted into the United States military service, the office duties are discharged temporarily during the officer's absence by another person legally qualified, and the office is to be filled temporarily by the legislative body. T.C.A. §§ 8-48-204, 8-48-205. However, if a clerk and master is inducted into military service, the chancellor appoints a qualified person to fill the office temporarily. T.C.A. § 8-48-205. If a popularly elected school superintendent is inducted into the military service and no county resident has a certificate from the school board, the legislative body may elect a person who is not certified. T.C.A. § 8-48-206. Any person temporarily elected to an office must execute a bond and subscribe to an oath to discharge the duties. T.C.A. § 8-48-207. The temporary official receives the salary and has the same power, authority, and privileges as the regular official. T.C.A. § 8-48-208. The temporary official may not remove assistants appointed by the regular official; that power remains with the regular official. T.C.A. § 8-48-209. All temporary persons chosen to fill offices must satisfy all qualifications required to hold the office. T.C.A. § 8-48-206.

Temporary Absence of County Executive and Interim County Executive. If the executive is absent or intends to be absent for more than twenty-one days, or is incapacitated, or otherwise unable to perform the duties of the executive's office, the legislative body appoints the chairperson to serve until the absence or disability is removed. Any contest of disability or its removal shall be adjudicated in chancery court. While the chairperson is serving as executive, the chairperson pro tempore presides over legislative body sessions. T.C.A. § 5-5-103. Note that this statute applies to a temporary absence, not to a vacancy. Recently the General Assembly passed provisions for an interim county executive to serve from the time the office becomes vacant until the county commission can appoint a successor, specifying that the chairperson of the county legislative body (or the chairperson pro tempore in circumstances where the county executive had been the chairperson) serves in the interim. T.C.A. § 5-5-103.

Interim Provisions for Other County Officials. The law provides for a temporary successor to fill vacancies in the offices of trustee, register, county clerk, and assessor of property, in addition to the provisions for an interim county executive as discussed above. T.C.A. §§ 8-11-111, 8-13-105, 18-6-115, 67-1-504. The duties of the office are to be temporarily discharged either by the chief deputy or by a deputy designated as temporary successor by the official in writing. It is important to note that this law only applies to the duties of the office and not to the office itself. There is no law which provides for a temporary successor in case of death, resignation or removal from office of the chief administrative officer of the county highway department.

Procedure for Filling Vacancies. Vacancies in elected county offices are filled temporarily by the legislative body. The appointee serves until a successor is elected at the next countywide general election for which the candidate has sufficient time to qualify. T.C.A. § 5-1-104. When a vacancy occurs in a county office, the county clerk must give ten days notice to every member of the legislative body to fill the vacancy. T.C.A. § 5-5-113. The legislative body does not have to wait for notice from the clerk to act, but may act on information from other sources. T.C.A. §§ 8-48-105, 8-48-108. The members may draw one day's compensation; a majority of all members is necessary to constitute a quorum. T.C.A. § 5-5-113.

In addition to the county clerk's notice to all legislative body members, the presiding officer of the legislative body must give public notice in a newspaper of general circulation in the county at least one week prior to the meeting. T.C.A. § 5-5-114. When an officer is elected or appointed by the legislative body or a vacancy is filled, the legislative body must hold an open election, allowing all citizens (except those prohibited by law) the privilege of offering candidates. T.C.A. § 5-5-115.

The vote of the legislative body members should be public by voice vote. The county clerk calls and records the name of each member and the member's vote, which is entered on the minutes. T.C.A. § 5-5-116. A majority of all members constituting the legislative body (not a majority of the quorum) is required to elect county officials. T.C.A. § 5-5-109.

Election of a Successor by the People. Any person appointed by the legislative body to fill a vacancy must serve in that capacity until a successor is elected by the county voters at the next general election. If the vacancy occurs after the time for filing nominating petitions for the party primary election and more than sixty days before the party primary election, the political party nominees should be selected in the primary election, and a successor should be elected in the August general election. If the vacancy occurs less than sixty days before the party primary election, but sixty days or more before the August election, the political party nominees should be selected by party convention and a successor elected in the August election. If the vacancy occurs less than sixty days before the August election, but sixty days or more before the November election, the political party nominees should be selected by party convention and a successor elected in the November election. T.C.A. § 5-1-104. All candidates for vacancies should qualify by filing nominating petitions no later than twelve o'clock noon on the fifty-fifth day before the election. T.C.A. § 5-1-104.

Removal from Office

The attorney general, district attorney general, or county attorney may investigate a complaint against a county official after receiving notice in writing that any official has been guilty of any acts, omissions, or offenses set forth in T.C.A. § 8-47-101, discussed above. If upon investigation there is reasonable cause for the complaint, an ouster proceeding may be instituted. T.C.A. § 8-47-103.

In an ouster proceeding the prosecuting attorney may issue subpoenas to witnesses. T.C.A. § 8-47-104. If a witness disobeys the subpoena or refuses to answer any proper questions, the witness is guilty of a Class C misdemeanor. T.C.A. § 8-47-106. No one is excused from testifying before the attorney general, district attorney, or county attorney at any investigation, or from testifying in any proceeding brought in court, on the ground that the testimony is self-incriminating. T.C.A. § 8-47-

107. However, no one will be prosecuted or punished because of anything about which he or she has been compelled to testify, nor shall the testimony be used against the person in prosecutions for any crime or misdemeanor under state law. T.C.A. § 8-47-107.

Under an alternative procedures, a petition or complaint for ouster may be filed by ten or more county citizens, who generally must post security for the costs of the lawsuit. T.C.A. § 8-47-110. Upon request of the citizens, the attorney general, the district attorney, or the county attorney must assist the citizens in prosecuting the proceedings. T.C.A. § 8-47-111.

When a petition or complaint of ouster is filed, the judge may suspend the accused official from performing any of the official duties, pending a final hearing and determination. The temporary vacancy should be filled as required by law; the appointee serves until the accused official is exonerated of the charge or a successor is elected. T.C.A. § 8-47-116. The appointee temporarily filling the office should receive the same salary and fees as paid to the suspended officeholder. T.C.A. § 8-47-121.

At least five days before an official is suspended, he or she must receive a notice which specifies the time and place of the hearing on the suspension application. The accused official may appear and present a defense, and is entitled to a full hearing. No suspension order will be made except upon a good cause finding. T.C.A. § 8-47-117. An official who successfully defends an ouster suit will be restored to office and will be allowed full costs, salary, and fees during the suspension period. T.C.A. § 8-47-121. The court may order the complaining party to pay costs and attorney's fees if the complaint is withdrawn or if the court finds the charges to be without merit. However, if the official is found guilty, he or she will be ousted from office and must pay the full costs adjudged in the case. T.C.A. §§ 8-47-120, 8-47-122.

Either party may appeal from the final judgment. However, the appeal will not suspend or vacate the judgment, which will remain in effect until it is vacated, reversed, or modified. T.C.A. § 8-47-123. An ouster suit has priority on appeal, and will be heard at the first term after the appeal is perfected and filed. T.C.A. § 8-47-125.

Conflict of Interest

A conflict of interest exists if a county officer or employee is required to supervise or vote on a contract in which he or she has some kind of investment or concern. Most of the time a conflict of interest involves a financial relationship, but the interest may also be one of supervisory control: is the official in the position of supervising himself or herself? Under general state law a "direct" conflict of interest is prohibited, while an "indirect" conflict may be allowed if it is disclosed. The statutory definitions of these terms read as follows:

"Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.

. . .

“Indirectly interested” means any contract in which the officer is interested but not directly so

T.C.A. § 12-4-101.

In other words, a direct interest exists any time the county enters into an agreement with a county official personally, or with any business in which the official is a sole proprietor, a partner, or the person owning the largest number of corporate shares. Basically, an indirect interest is anything else: it exists in a contract which could result in some type of benefit for a county official, but which does not meet the definition for a direct interest.

The general rule is that a direct conflict is prohibited, while an indirect conflict is permitted if it is publically disclosed; after disclosure the official is not required to abstain from voting on the matter, but may do so. T.C.A. § 12-4-101. Although 1998 Public Chapter 774 amending the conflict of interest law appeared to reverse the rule that a person not voting because of a conflict of interest would not be counted in determining a majority on the county commission, this 1998 act did not amend T.C.A. § 5-5-102 which continues to specifically state that any member of county legislative body who abstains for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

A special rule exists in the case of a county commissioner who is also an employee of the county. A conflict of interest can come up in this situation any time the county commission votes on appropriations or budgets. A statutory exception allows a member of the county legislative body to vote on these matters if that member was employed by the county before becoming a member of the county commission. But, immediately before the vote the commissioner must read the following disclaimer which is set out in the Tennessee Code:

Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents.

T.C.A. § 12-4-101.

The vote of any member who is required to make this disclosure and does not do so is void if it is challenged in a timely manner (during the same meeting at which the vote was cast and prior to the transaction of any further business). T.C.A. § 12-4-101. A legislative body member who is also a county employee and whose employment began on or after the date on which the member was initially selected as a member of the governing body may not vote on matters in which the member has a conflict of interest. T.C.A. § 12-4-101.

The preceding paragraphs discuss the general conflict of interest rule and some of the exceptions to it. In some situations, however, officials are held to a more stringent standard of conduct, referred to as the “strict rule.” Under this standard both direct and indirect conflicts of interest are prohibited. Although under the general rule indirect interests are allowed if they are disclosed, the strict rule disallows the interest altogether. There are several statutes which prescribe this strict rule. The first is the County Uniform Highway Law which prohibits any financial or personal interest, either direct

or indirect, in the purchase of any supplies or equipment for the county road department. T.C.A. § 54-7-203. The second provision is found in the County Financial Management System of 1981, which applies to any county in which it has been adopted and essentially holds all county officials and employees to the strict rule. T.C.A. § 5-21-121. The third statute requiring a strict standard is the County Purchasing Law of 1957, which similarly applies in counties where it has been adopted. T.C.A. § 5-14-114. Finally, officers and employees of the schools are prohibited from having any financial interest in contracts for school equipment or supplies, unless a sealed competitive bid system is used and the interested party is not involved in the specifications or selection of bids. T.C.A. § 49-6-2003.

Conflict of interest issues arise frequently in county government and each factual situation should be considered on an individual basis. However, as a general rule, a county official should determine who has the decision-making authority in a matter and who may derive a direct or indirect benefit from the decision. A conflict may exist if the benefitted person is a part of the decision-making process. For example, a conflict may arise when a legislative body member sells land or leases space to the county. Penalties for violating conflict of interest rules may be severe, including loss of payment under the contract and dismissal from office. T.C.A. § 12-4-102. In light of these severe penalties, the safest course of action is to err on the side of caution. The Attorney General frequently issues conflict of interest opinions which may provide guidelines in specific situations. If in doubt regarding these issues, check with your county attorney.

CHAPTER 5

ELECTIONS AND REAPPORTIONMENT

The County Election Commission

Appointment and Removal. The basic unit which regulates elections at the county level is the county election commission. The five commissioners for each county are appointed by the state election commission; three must be members of the majority party in the state, appointed by members of the state election commission from that party, while the other two will be of the minority party, similarly appointed by the minority members of the state election commission. T.C.A. § 2-12-103. Majority and minority parties are defined as the political parties whose members hold the largest and second largest number of seats in the combined houses of the General Assembly. T.C.A. § 2-1-104. Before appointing county election commissioners, members of the state election commission are directed to consult with members of the General Assembly from each county regarding whom to appoint as county election commissioners. T.C.A. § 2-12-103.

Qualifications and Disqualifications. County election commissioners must be registered voters who have been residents of the state for five years and residents of the county for which they are appointed for two years (with an exception for counties with a population between 276,000 and 277,000). Elected officials, employees of elected officials and employees of a state, county, municipal, or federal government body or agency are not eligible to serve on the election commission. T.C.A. § 2-12-102. However, this statute does not disqualify the following people: a notary public, an employee of an institution of higher learning, a school teacher or a member of a reserve unit of the U. S. Armed Services or National Guard, unless on active duty. T.C.A. § 2-1-112. If a commissioner qualifies as a candidate for any public office, that member will be automatically disqualified and a vacancy will be created on the commission. T.C.A. § 2-12-102.

Oath of Office and Organization. Within twenty days after their appointment, county election commissioners must qualify by filing an oath of office with the secretary of the state election commission. Failure to qualify will vacate the office. T.C.A. § 2-12-104. Also within twenty days the commission is to organize by electing a chairperson and a secretary from among their number, each of different parties. Within ten days of this selection, the commission must report the names and addresses of the officers and other members to the state election commission. T.C.A. § 2-12-105.

Office Hours. Each county election commission must have an office in the county courthouse or another public building, and may designate additional locations if they are needed. A schedule of minimum office hours, which depends on the population of the county and the certification status of the administrator, is set out in T.C.A. § 2-2-108. The county election commission may also keep additional office hours as needed to (1) register qualified applicants, (2) replace lost registration cards, (3) transfer or change registrations, and (4) perform its other duties.

Meetings. The county election commission meets on the call of its chairperson (if there is no chair, the oldest member presides). T.C.A. § 2-1-113. All meetings must be open to the public and preceded by adequate notice, as required by Tennessee's Sunshine Law. T.C.A. § 8-44-101 *et seq.*

This notice must give the time, place, and purpose for the meeting, although the requirement may be met by permanently posting a conspicuous meeting notice in the commission office. The commission must keep official minutes of each meeting, including the vote of each member on all issues, and must allow reasonable times for public examination. A majority of the members constitutes a quorum, and a measure passes on a majority vote of the members present. Any action taken which does not meet these requirements can be voided at the request of anyone who may be adversely affected. T.C.A. § 2-1-113.

Duties

Publication of Election Notices. The county election commission is required to publish in a newspaper of general circulation in the county a notice of all elections, except special elections, at least ten days before the qualifying deadline. A notice of elections on questions must be published some time between twenty and thirty days before election day, and must include in its entirety the resolution or other instrument which is to be decided. Finally, a notice of every election, stating the day, time, and polling places, must be published some time between ten and three days before the election. T.C.A. § 2-12-111. The election commission must also publish a sample ballot in a newspaper of general circulation twice, at least five days before the start of early voting and at least five days before election day. T.C.A. § 2-5-211.

Submission of Semi-Annual Report. The county election commission is required to provide a semi-annual voter registration report to the State Coordinator of Elections. The content of this report has changed significantly with the implementation of the National Voter Registration Act. See T.C.A. § 2-12-114 or contact the Coordinator of Elections for information about the requirements of this report.

Promotion of Voter Participation. The county election commission is charged with the general duty of encouraging wider participation in the electoral process. Except in counties whose population falls between 825,000 and 830,000, where the organization is slightly different (See T.C.A. §§ 2-12-112, 2-12-116, 2-12-201, 2-12-202), these duties involve the selection of the administrator of elections and then assistance with the following responsibilities of that office: approving an annual budget for the commission, approving purchases of voting machines and seeing to their maintenance, hiring legal counsel, designating polling places and precinct boundaries, and assisting in obtaining poll workers. Additionally, the commission must ensure the fairness and smooth functioning of elections by certifying voting machines, taking responsibility for absentee ballot boxes, assisting election personnel on election day, certifying election results and election expenses, determining a uniform time for the opening of polls, and maintaining the security of the election commission office and facilities. T.C.A. § 2-12-116.

Employment of Administrator of Elections. Tennessee statutes require election commissions to employ an administrator of elections (formerly known as the registrar-at-large), who is the chief administrative officer of the commission and who is responsible for daily operations of the office. The duties of the administrator include, but are not limited to, the following: (1) employment of office personnel; (2) preparation and submission of the annual budget; (3) requisition and purchase of supplies; (4) maintenance of voter registration files, campaign disclosure records, and other required records; (5) instruction of poll workers; (6) preparation of notices for publication; (7) preparation and maintenance of all fiscal records; (8) dissemination of information regarding all aspects of the

electoral process; (9) promotion of the electoral process; (10) attendance at educational seminars; (11) knowledge of current laws pertaining to the electoral process; and (12) assistance in planning and implementing apportionment plans. T.C.A. § 2-12-201. In fulfilling these duties, the administrator and election commission must keep in mind that, except in an emergency, the commission may not employ, nor ask the administrator of elections to employ, the commissioners themselves or members of their families nor, after July 1, 1999, the spouse, parents or children of the administrator of elections. T.C.A. §§ 2-12-116, 2-12-201. Note that Macon County has some special provisions regarding hiring family members which are included in the law under a narrow population classification. The election laws also provide for the certification of administrators of elections, T.C.A. § 2-11-202, and for their compensation. T.C.A. §§ 2-12-208, 2-12-209.

Appointment and Education of Election Officials. The appointment of county election officials normally begins with a nomination process. The county primary board for each party shall (and the executive committee of each party may) submit names to the county election commission thirty days prior to the appointment time. If the nominees meet the qualifications to serve, the election commission shall appoint them. T.C.A. §§ 2-4-103 through -106. However, the commission may refuse to appoint any person who has previously served and who, in the opinion of the commission members from his or her political party, is unreliable, incompetent or otherwise unfit to serve. If there is an inadequate number of nominees, the county election commission may appoint as many additional people as necessary. T.C.A. § 2-4-106.

From these nominees, if possible, the majority and minority party factions of the county election commission each appoint one precinct registrar for each polling place. For most counties, these appointments are made for each election, but they are made for two year terms in counties whose population falls between 825,000 and 830,000. T.C.A. § 2-12-202. The county election commission is also directed to appoint, at a minimum, the following election officials for each polling place: one officer of elections and three judges. Two of the judges appointed shall concurrently serve as the precinct registrars in accordance with § 2-12-202. In precincts where voting machines are used, any judge not serving as a precinct registrar shall concurrently serve as a machine operator. One machine operator can operate up to two voting machines. T.C.A. § 2-4-102. Each of these officers, as well as precinct registrars and assistant precinct registrars, must be registered voters at the polling place and inhabitants of the precinct for which they are appointed; however, in counties with a population under 600,000, the precinct registrar need only be a registered voter and inhabitant of the county and, in metropolitan counties, the precinct registrar need only be a registered voter and inhabitant of the legislative district. T.C.A. § 2-4-103. If any election official fails to appear at the polling place, the officer of elections or, in such officer's absence, a majority of the election officials attending, shall select a person to fill the vacancy who is a registered voter of the county. Persons chosen to fill vacancies shall be, whenever practical, members of the same party as the person they are replacing.

The election commission may also appoint as many inspectors as they deem necessary, who must be registered voters and inhabitants of the county. Inspectors investigate the conduct of elections on behalf of the election commission and report any irregularities to the commission. T.C.A. § 2-4-102.

Not more than two judges at a polling place may be of the same political party, if those from different parties are willing to serve. T.C.A. § 2-4-104. If it is practicable, no more than one-half of the election officials at one polling place, and one-half the total number of county inspectors, may be of the same political party. If only one party elects to hold a primary, then only members of that party may serve as election officials. T.C.A. § 2-4-105. Election officials are to be notified of their appointments on a statutorily-prescribed form. T.C.A. § 2-4-107.

The county election commission is also responsible for instructing the election officials in their duties. Within thirty days of each election, a meeting is to be held for this purpose; attendance may be limited to those who are inexperienced or otherwise in need of such training. The officials are to be paid \$10 each for the time spent in training and qualifying, but only if they serve in the election. T.C.A. § 2-4-108. They are to be paid \$15 for service on election day. The amounts of compensation can be increased by resolution of the county legislative body. T.C.A. § 2-4-109.

Compensation and Funding. A minimum compensation for members of the county election commission is specified by statute and varies according to the population of the county. These amounts may be increased in any county by resolution of the county legislative body. In order to trigger the daily rate, a commissioner must work at least one hour in any given twenty-four hour period, but payment is made for meetings lasting less than one hour if they are required by statute, budget preparation, or litigation. T.C.A. § 12-12-108.

Basically, the funding of each county election commission is the responsibility of that county which, if not provided for, will be compelled by the chancery court. However, each municipality is responsible for expenses which the county election commission incurs in holding municipal elections, and for the additional expenses attributable to the municipal election when it is held on the same day as a county-wide election. Similarly, elections for the sole purpose of choosing a member of the General Assembly are to be funded by the state, as are presidential preference primaries. The state will also fund county primaries which are held along with the presidential primary. All expenses must be properly reviewed and certified in order to be paid. T.C.A. § 2-12-109.

Nominations and Qualifying Deadlines

Statewide Organization of Political Parties. Organization of the party begins with the state executive committee of each political party, since it also functions as the state primary board for the party. T.C.A. § 2-13-102. Members of this committee are elected in the regular August primary election immediately prior to the election for governor. One man and one woman from each party are elected from every senatorial district to serve four year terms beginning on September 15 following their election. They must take the oath of office, filing it with the State Coordinator of Elections. T.C.A. § 2-13-103.

The state executive committee is to meet at least once in even-numbered years to appoint the county primary boards, made up of five people from each county appointed for two year terms. T.C.A. § 2-13-108. The members of this board are chosen from a list of names submitted by county executive committees, although two of the members may be appointed without regard to the lists if the names on them are not fairly divided among the elements of the party. If no list is submitted, the state

primary board is to draw up its own list from which to make appointments, or it may designate the county election commission to act as the county primary board. T.C.A. § 2-13-110.

Nominating Process. There are several methods by which a candidate may appear on the ballot. One method, party primary at the regular August election, is statutorily required for several offices: (1) Governor, (2) members of the General Assembly, (3) U.S. Senator, and (4) members of the U.S. House of Representatives. T.C.A. § 2-13-202. Nominations for offices other than those listed above can be made either by primary or by any other method authorized under party rules. T.C.A. § 2-13-203. Apart from some special provisions related to presidential candidates (see § 2-5-208), only statewide political parties may nominate candidates to appear on the ballot in any election involving voters of more than one county. Contact the office of the Coordinator of Elections for information regarding the procedures for recognition of a new political party. For local elections, a political party must have achieved significant voter support, as defined in T.C.A. § 2-13-201, in order to place its candidates on the ballot. According to the statute, the local party must have had a candidate that received at least 20% of the total vote at the most recent local election or must file a petition for recognition with the county election commission signed by at least 5% of the registered voters of the county or municipality within one year before the election.

In an election involving only voters of one county or part of one county, candidates nominated by a method other than primary are to be certified to the county election commission by the qualifying deadline. If a method other than primary election is used to fill an office involving voters in more than one county, the candidate is to be certified to the Coordinator of Elections, who then certifies that candidate to the election commissions in the proper counties. T.C.A. § 2-13-203.

According to T.C.A. § 2-13-203, if a party decides to nominate candidates by primary election, the county executive committee of the party must direct the election commission, in writing, of the intent to hold a primary at least thirty days before the qualifying deadline for the primary. County primary elections are held on the first Tuesday in May for candidate selection in the August election. In presidential election years, the primary may also be held on the same day as the presidential preference primary; in that case the qualifying deadline is twelve o'clock noon, the third Thursday in January. T.C.A. § 2-13-203. The presidential primary itself is to be held on the second Tuesday in March. T.C.A. § 2-13-205. Procedures for conducting the presidential preference primary and for the selection of convention delegates are detailed in Title 13, Chapter 2, Part 3 of the *Tennessee Code Annotated*.

Municipal elections are specifically excepted from these provisions, in that municipal elections are to be nonpartisan. In other words, unless a city charter states otherwise, municipal elections may not require candidates to be nominated by political parties. T.C.A. § 2-13-208.

Nominating Petitions. All independent and primary candidates must submit a nominating petition in order for their names to appear on the ballot. (Candidates nominated by a method other than primary, however, are certified directly to the election commission by the party.) T.C.A. § 2-5-101. Nominating petition forms are furnished by the county election commission and, for some offices, by the Coordinator of Elections. T.C.A. § 2-5-102. These petitions are not to be issued more than ninety days before the qualifying deadline for the office sought. T.C.A. § 2-5-102(b)(5).

For most offices, the nominating petition must be signed by the candidate as well as a minimum of twenty-five or more registered voters who are eligible to fill the office (presidential and delegate candidates have different requirements). Either the signer's normal or legal signature is acceptable. The voter must also include the residence or other address as shown on the voter registration card. Including additional information on the petition which does not appear on the voter registration card will not disqualify the signature if there is no conflict in the information. T.C.A. § 2-5-101.

Restrictions on Candidacy. Under T.C.A. § 2-5-101, there are certain restrictions on how a candidate may qualify:

1. No one may qualify with more than one political party for the same office.
2. No one may qualify as an independent and a primary candidate for the same office in the same year.
3. No one defeated in the primary may qualify as an independent in the general election.
4. No primary candidate may appear on the ballot for the general election as a nominee of a different political party or as an independent.
5. No one may qualify for more than one state office or more than one constitutional county office or county-wide office in an election. (Note that, unless the qualifications for a particular office prevent it, a candidate may run for one county and one state office in the same election.)

Qualifying Deadlines and Procedure. Candidates are required to qualify for an election by certain statutorily-prescribed times. Although these times vary in certain circumstances, generally a candidate must qualify by twelve o'clock noon, prevailing time, on the third Thursday in the third calendar month before an election or a primary. T.C.A. § 2-5-101. However, there are a number of exceptions based on the office sought and whether or not a primary is being held. For information on specific qualifying deadlines for any election or primary it is always advisable to call the county election commission, regarding local elections, or the State Coordinator of Elections, regarding state elections.

Candidates for some offices are required to file certified duplicate copies of the original nominating petition. For example, candidates for statewide offices, as well as for representative to the U.S. Congress, must file the original petition with the State Election Commission and file duplicates with the Coordinator of Elections and the party's state executive committee (for primary candidates only). T.C.A. § 2-5-103. Candidates for other offices must file the original nominating petition with the county election commission in the county of residence, and file duplicates with the election commissions of all counties served by the office which the candidate seeks. T.C.A. § 2-5-104.

Candidates for chief administrative officer of county highway departments are required to certify their qualifications under the County Uniform Highway Law by filing affidavits with the Tennessee Highway Officials Certification Board at least fourteen days before the qualifying deadline. This board is responsible for certifying that the qualifications are acceptable. This certification, which is filed with the qualifying petition, is required before the candidate's name may be placed on the ballot. All correspondence with this board should be submitted through the office of the Coordinator of Elections. T.C.A. § 54-7-104.

Any candidate for a judicial office which must be filled by an attorney must certify that he or she is licensed to practice law in this state, and must place his or her supreme court registration number on the nominating petition. T.C.A. § 2-5-106.

In addition to a qualifying petition, sheriffs must also file an affidavit with the county election commission and file evidence of certain qualifications with the POST commission. See T.C.A. § 8-8-102 for detail on these requirements.

Write-In Candidates. In a primary election where there are no candidates listed on the official ballot for an office, a write-in candidate for that office must receive at least five percent of the total number of votes cast in the primary to receive a party nomination. T.C.A. § 2-8-113. Furthermore, a write-in candidate for county or municipal office must receive a minimum of twenty-five votes in the primary before being placed on the ballot for the general election, a requirement which cannot be modified by private act or charter. T.C.A. § 2-5-219. In an election where voting machines are used, a voter may write in a name not listed on the ballot if the voter requests a paper ballot from the ballot judge before operating a voting machine. After receiving a paper ballot, a voter may not enter a voting machine. T.C.A. § 2-7-117.

Tie Votes. According to T.C.A. § 2-8-111, the following bodies are to cast the deciding vote if any of these general elections results in a tie:

1. Elections involving a single county or a part of a county - county legislative body;
2. Municipal elections - municipal legislative body (or the legislative body may call for a run-off);
3. Elections for U.S. Congress - Governor;
4. Election for Governor - General Assembly;
5. Any other election except U.S. Senator (see below) - State Election Commission.

An election for U.S. Senator is void if it results in a tie, and the Governor is to order a special election. T.C.A. § 2-8-111. If a tie vote occurs in a primary election, the tie shall be broken according to the rules of the political party. T.C.A. § 2-8-114.

Procedure for Elections

Early Voting Procedures. In 1994 the General Assembly passed legislation which adopted an early voting period and amended absentee voting procedures. T.C.A. § 2-6-101 *et seq.* This act replaces the procedure to vote absentee by personal appearance (T.C.A. § 2-6-109) with an early voting period, which starts twenty days before an election and runs through the fifth day before the election, in which any registered voter may vote (although different time periods may apply to municipalities). Upon the request of a municipality holding an election at some time other than the regular August or November election, the county election commission shall establish a satellite voting location within the corporate limits of the municipality. The municipality must pay the costs of the location. T.C.A. § 2-6-103. For early voting the county election commission may choose to use voting machines, paper ballots, or a combination of both. The State Coordinator of Elections is to promulgate rules for voting machine use, as well as forms for early voter and absentee ballot applications, determining distinguishable colors for each type of envelope. Instead of the state forms, a county election

commission may use its own computer-generated forms with the approval of the Coordinator of Elections. T.C.A. § 2-6-312. Voters who are unable to vote either during the early voting period or on election day may submit an application to vote absentee but must meet the statutory requirements. For specific absentee voting procedures, see T.C.A. § 2-6-101 *et seq.*

Times for Regular Elections. Regular general elections are held in every even-numbered year on the first Thursday in August for county offices, and on the first Tuesday after the first Monday in November for state offices. Elections for the following offices are to be held at the regular August election when the election immediately precedes the commencement of a full term:

1. Sheriff;
2. Constable;
3. Assessor of Property;
4. County Clerk and Clerks of the Circuit and other courts;
5. Register;
6. County Trustee;
7. Members of the county legislative body;
8. Judges of all courts; and
9. District Attorney General.

T.C.A. § 2-3-202.

Elections for the following offices are to be held at the regular November election when the election immediately precedes the commencement of a full term:

1. Representative in the General Assembly;
2. Representative in the United States Congress;
3. Senator in the General Assembly;
4. Senator in the United States Congress;
5. Governor; and
6. Electors for the President and Vice-President.

T.C.A. § 2-3-203.

Special Elections. A special election must be held whenever a vacancy in any office is required to be filled by election at a time other than the time fixed for general elections. T.C.A. § 2-14-101. For all county and municipal offices, special elections are ordered by the county election commission, while the Governor orders those for all other offices. T.C.A. § 2-14-103. Special elections must be held from seventy-five to eighty days after notice of the need for an election is received. However, if a regular general election or primary is scheduled within thirty days of the time required for a special election, then the special election may be held on that day. If the day of the election is moved, then all other dates are adjusted accordingly. T.C.A. § 2-14-102. The county election commission must publish notice of the special election within ten days after it receives the election order. T.C.A. § 2-14-105. In most cases, candidates in a special election must qualify as in regular elections, although the deadline for filing qualifying petitions and party nominations is twelve o'clock, noon, on the sixth Thursday before the day of the special election. T.C.A. § 2-14-106.

Referenda. Certain questions are required by law to be submitted to the people in referendum, for their approval or disapproval. Generally, if the law does not provide otherwise, referendum elections submitted to the people are to be held on dates set by the county election commission but not less than forty-five days or more than sixty days after the county election commission is directed to hold the election. However, resolutions, ordinances or petitions requiring the holding of elections on questions submitted to the people which are to be held with the regular August election, the regular November election or the Presidential Preference Primary shall be filed with the county election commission not less than sixty days prior to that election. T.C.A. § 2-3-204. If the date set for a referendum falls within thirty days of an upcoming regular election or primary, the election commissions of the counties involved may reset the date of the referendum to coincide with the regular general or primary election. All other dates dependent on the election date will be adjusted accordingly. If the referendum is to be held in more than one county, the election commissions for both counties must meet and set a date jointly. T.C.A. § 2-3-204. Public Chapter 558 of 1997 also created a uniform procedure for filing and acceptance of petitions in governmental entities that allow for recall, referendum, or initiative elections pursuant to terms of the charter of that government.

National Voter Registration Act

In 1993 the U.S. Congress passed the National Voter Registration Act (codified as 42 U.S.C. §1973gg et. seq.). The law has been commonly dubbed the “Motor/Voter” program due to the law’s requirement that driver’s license facilities (as well as a number of other agencies) offer voter registration services to their clients. Congress required most states to pass legislation and implement the programs of the act by January 1, 1995. Tennessee fully implemented the program by that date. Some of the act’s programs (such as by-mail voter registration) were already available in Tennessee. Under the new legislation, Tennessee established a network of co-operative efforts between the local county election commissions and numerous state and local agencies. The participating voter registration agencies in Tennessee are the following: the Dept. of Safety (motor vehicles division), Dept. of Health (WIC program), Dept. of Human Services, Dept. of Mental Health and Mental Retardation, Dept. of Veterans Affairs, public libraries, county clerks, and registers of deeds. Public high schools were added to this list as a designated voter registration agency by 1997 Public Chapter 501.

In addition to expanding the locations for voter registration, the law made substantial reforms in voter registration record-keeping and maintenance. It eliminates purging a voter record for non-voting (formerly practiced in Tennessee) and requires election commissions to accommodate voters who have moved within a county but failed to update their voter registration.

Campaign Financial Disclosure

Campaign Financial Disclosure Act of 1980. This act requires all candidates for public office to file a report of campaign contributions and expenditures, except that candidates for part-time offices paying less than \$500 per month are exempt from these requirements. The exemption does not apply, however, to a candidate for a chief administrative office or whose campaign expenditures exceed

\$1,000. T.C.A. § 2-10-101. Enforcement and administration is the responsibility of the Registry of Election Finance.

Before a candidate or campaign committee can make or receive campaign expenditures, it must file the name and address of the political treasurer with the Registry of Election Finance, for state elections, or with the county election commission, for local elections. The candidate may serve as political treasurer, but if he or she appoints someone else, the candidate must co-sign the required statements. T.C.A. § 2-10-105. If the candidate or committee files this statement more than one year before the election in which the candidate expects to be involved, then a financial report must be filed with the proper agency by January 31, and annually through the year of the election. However, the annual report need not be filed if the reporting date falls within sixty days of a report otherwise required by the election laws. T.C.A. § 2-10-105.

The act requires each candidate or political campaign committee to file a statement of all campaign contributions and expenditures. Candidates for state offices file the report with the Registry of Election Finance, while those in local elections file with the county election commission. A candidate for the General Assembly must file an additional copy with the election commission of the candidate's county of residence. T.C.A. § 2-10-105.

Time Covered by Reports. Initial statements for any election begin with the day of the first contribution or expenditure, whichever comes first, and go through the tenth day before the election. If a candidate has filed a statement more than one year before the election, as discussed above, then subsequent statements must begin with the last day included in the prior report, and go through the tenth day before an election. Then, no later than forty-eight days after the election, the candidate must file another statement which covers the time from the previous one through the forty-fifth day after the election. This is the final statement if the balance of contributions and expenditures is zero. T.C.A. § 2-10-105. If the post-election report shows remaining funds, obligations, or deficits, then the candidate or committee must file supplemental annual statements. Beginning with the post-election report, these supplemental statements must be filed annually until the account shows a balance of zero. T.C.A. § 2-10-106.

Reports for both primary and general elections must be filed separately, even for the same office in the same year. However, appointment of the political treasurer for the primary election is also valid for the general election for the same office. All records used in preparing financial disclosure statements must be retained for at least one year after the election. T.C.A. § 2-10-105.

In addition to the financial transactions shown in these regular statements, substantial contributions or loans received within ten days of any election must also be reported. In a state election this means that any transfer of funds over \$5,000 must be reported within seventy-two hours to the registry of election finance. Any amount over \$2,500 in a local election triggers the requirements of this section and must be reported to the county election commission. The report is to be submitted on forms furnished by the Registry, and should include the following information: amount, date contributed, description and valuation of in-kind contributions, and for a loan, the name and address of lender, name of recipient, and details of any security agreement for the loan's repayment. T.C.A. § 2-10-105.

Contents of Reports. Financial statements submitted under the Act must contain specified information about all income and expenditures during the period covered by the report. If neither expenditures nor contributions exceeded \$1,000 during this time period, the report may simply state that fact. Otherwise the report should list separately any single contribution or expenditure over \$100, including full name, address and, for expenditures, purpose. Contributions of \$100 or less are to be totaled and listed together, as are expenditures of this amount, though the latter are to be grouped by category. “In kind contributions,” those other than money, are to be listed separately, though once again those of \$100 or less are to be totaled. The Registry of Election Finance has more specific information regarding in kind contributions. T.C.A. § 2-10-107.

Closing Out Accounts and Using Unexpended Funds. When a candidate or political campaign committee desires to close out a campaign account, it may file a statement to that effect at any time; however, the statement must show no unexpended balance, continuing obligations, or deficits. T.C.A. § 2-10-107. A candidate may close out a campaign account by transferring any remaining funds to another campaign fund and commencing annual filings on that account. T.C.A. § 2-10-106. Other permissible uses for unexpended campaign funds are listed in T.C.A. § 2-10-114. These include returning funds to contributors, transferring them to the political party, contributing them to an education trust fund or other specified tax-exempt organization, and using them to defray costs necessitated by the office. T.C.A. § 2-10-114. However, at no time are campaign funds the personal property of the candidate, and they are not available to satisfy any debts other than campaign obligations. T.C.A. § 2-10-106. The candidate must decide upon the allocation of remaining campaign funds within sixty days after the election. T.C.A. § 2-10-114.

Enforcement. All campaign financial statements are available for public inspection, either at the Registry of Election Finance, for state elections, or the county election commission for local elections. T.C.A. §§ 2-10-206, 2-10-103. Anyone wishing to make an inspection must provide name, address, and whom he or she represents, if anyone else, and must provide evidence of identification. A record of this information must be made and forwarded to the candidate within three days of the inspection. T.C.A. § 2-10-111. Any registered voter who believes information has been omitted or misstated may file a sworn complaint with the Registry of Election Finance (state elections) or the district attorney general where the voter resides (local elections). However, anyone who knowingly files a false complaint or one for harassment purposes is liable for civil penalties and attorney’s fees. T.C.A. § 2-10-108. The Registry of Election Finance or the district attorney general is responsible for investigating complaints and seeking injunctions to enforce these provisions. T.C.A. § 2-10-109.

Civil penalties may also be assessed against a candidate who fails to file a required report or files it late. These fines range from \$25 to \$10,000 or more, depending upon the circumstances. Specific procedures and requirements for these penalties are detailed in T.C.A. § 2-10-110.

Campaign Contribution Limits

Campaign Contribution Limits Act. In 1995 the General Assembly passed the Campaign Contribution Limits Act, codified in T.C.A. Title 2, Chapter 10, Part 3. As with most other areas of campaign finance, the Registry of Election Finance has administrative and enforcement powers over this act.

The act prohibits contributions by a person to any candidate which, in the aggregate, exceed \$2,500 in a statewide election or \$1,000 in other state or local elections. Multi-candidate political campaign committees are limited to contributions of \$7,500 in statewide elections and \$5,000 in other state and local elections. The amount a candidate can contribute to his or her own campaign is also limited although the constitutionality of this limitation has been questioned. Candidates cannot contribute more than \$250,000 to their own campaign in statewide elections, \$40,000 in senate campaigns, and \$20,000 in any other state or local office campaign. T.C.A. § 2-10-302.

Candidates running in statewide elections are prohibited from accepting more than 50% of their total contributions from multi-candidate political campaign committees. For any other office there is a simple \$75,000 limit on the total contributions from multi-candidate committees. These calculations do not include contributions made to the candidate by a political party.

Some contributions may be indirectly attributed to the candidate. Anyone involved in campaign or fund-raising activities should examine the rules regarding these contributions. T.C.A. § 2-10-303.

The limitations of this statute do not apply to loans of money by a financial institution as defined in T.C.A. § 45-10-102(3) if they meet certain qualifications. There are also limits on the aggregate contributions allowed by political parties. These are: \$250,000 in statewide elections, \$40,000 for candidates for the senate, and \$20,000 for elections to other state or local public office. T.C.A. § 2-10-306.

The term “contributions” as used in these statutes is defined very broadly. T.C.A. § 2-10-306. Once again, any one involved in fund-raising or campaign activities should take a close look at these statutes or contact the Registry of Election Finance for advice. Contributions which exceed the limit will not be considered a violation of these laws if the candidate or political campaign committee returns the contribution to the person who made the contribution within sixty days of the receipt of the contribution. T.C.A. § 2-10-307.

The registry may impose a penalty up to \$10,000 or 115% of the contributions that exceed the limits. If the penalty is not paid for thirty days, the candidate becomes ineligible to qualify for election until the penalty is paid.

Fund Raising During the General Assembly Session. From the time the General Session convenes until it closes, or until May 15 if that date is earlier, no member of the General Assembly or candidate for the General Assembly can conduct a fund raiser or solicit or accept contributions for the benefit of the caucus, a caucus member, or candidate for the General Assembly or Governor. Certain political campaign committees are likewise prohibited from this type of fund raising during the same time period. T.C.A. § 2-10-310. Excess funds raised for election to a local public office cannot be transferred to a campaign account for election to the General Assembly or Governor.

Conflict of Interest Disclosure

Disclosure Statements. Each candidate for public office is required to file a disclosure statement regarding possible conflicts of interest. Items listed in this report include the following: major sources of income over \$1,000, investments over \$5,000, all lobbying activities, subject areas in

which professional services are rendered, bankruptcy adjudication, non-business loans in excess of \$1,000 (with certain exceptions), and any other information the candidate wishes to disclose. The statement includes not only the interests held by the candidate, but also those of his or her spouse and minor children. T.C.A. § 8-50-502.

Candidates in local elections must file the conflict of interest statement with the county election commission in the county of the candidate's residence, while state election candidates must file with the Registry of Election Finance. Statements must be filed in the appropriate office within thirty days after the qualifying deadline for the desired office. The disclosure must be written on the form prescribed by the Registry of Election Finance and must be signed by one attesting witness. The statement becomes a public record after it is filed. T.C.A. § 8-50-501. As with improper financial disclosure, failure to report possible conflicts of interest can result in civil penalties. T.C.A. §§ 8-50-505, 2-10-110.

County Reapportionment

Requirements for Reapportionment. The Tennessee Constitution in Article VII, Section 1 provides for the election of a county legislative body in each county which should equally represent all areas of the county:

The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten (10) years based upon the most recent federal census. The legislative body shall not exceed twenty-five (25) members, and no more than three representatives shall be elected from a district.

The statutes implementing this constitutional provision are T.C.A. §§ 5-1-110 through 5-1-112, which require the county legislative body of each county to meet at least once every ten years for the purpose of adopting a plan of reapportionment. By a majority vote of the membership, each county legislative body is to change the boundaries of districts, redistrict the county entirely, or increase or decrease the number of districts, if necessary, to apportion the county legislative body so that the members represent substantially equal populations. Although reapportionment is required at least once every ten years, the county legislative body is given the flexibility to determine when reapportionment is necessary, and may adopt a new scheme any time it is needed to maintain substantially equal representation of the county's population. Although in the past local governments have employed a number of different population indicators in drawing districts, now the law requires them to use the latest federal census data. T.C.A. § 5-1-111.

Reapportionment Process. The first step a county legislative body should take when it prepares to develop a redistricting plan is to appoint a reapportionment committee. Although this committee is not a statutory requirement, most counties find that it greatly facilitates the process. In selecting the committee the legislative body will wish to achieve broad representation of the county, but a committee that is too large can prove cumbersome. Membership in the county legislative body is not required to serve on the reapportionment committee, and the inclusion of others is often helpful. After the committee has formed and the official county population from the latest federal census is known, the committee should determine the population in each voting precinct and then group these

into “reasonably compact and contiguous” districts with substantially equal population and representation.

Districts cannot overlap one another, and no voting precinct may be split into different districts. T.C.A. § 5-1-111. Although the new voting districts need not conform to the boundaries of the original civil districts, these latter areas are to be preserved as they existed at the time of the first apportionment, for record keeping purposes. T.C.A. § 5-1-112.

Before the new reapportionment plan takes effect, it must be put into writing and adopted by a majority of the county legislative body. Finally, the county legislative body must commission a map or maps showing the new voting districts as well as the original civil districts, complete with written descriptions of all boundaries. Copies must be filed with the county clerk and the Secretary of State; revised maps must be filed within ninety days of any revision. T.C.A. § 5-1-110.

Enforcement. Any citizen of the county may challenge the reapportionment plan in the county's chancery court, which has the power to order amendments to bring the plan into compliance with state law. If the county legislative body fails to make apportionment, the court can order it to be done. T.C.A. § 5-1-111. Since the provisions of this statute make a challenge of a county's reapportionment plan so simple, it is extremely important that each county follow the law as closely as possible and document each step taken in the preparation of a reapportionment plan.

School Board and Highway Commission Districts. Like other voting districts, school board and highway commission districts must conform to the “one person, one vote” reapportionment standard in order to be constitutionally acceptable. Most counties establish school and highway districts through private acts of the General Assembly; reapportionment of these districts must be accomplished by private act if a private act established the original districts. Many counties provide that school board districts and highway commission districts are to coincide with the county commission districts of the county. This practice can substantially simplify the reapportionment process.

Assistance in Reapportionment. Counties may obtain assistance in developing a reapportionment plan from the County Technical Assistance Service, the Department of Economic and Community Development's Division of Local Planning, or the Comptroller of the Treasury's Office of Local Government.

CHAPTER 6

SOURCES OF COUNTY REVENUE

The county legislative body does not have inherent power to tax or set fees. Instead, all revenue received by the county is derived from statutory law, either general laws (public acts) or private acts.

A county government's chief sources of revenue, the property and local option sales taxes, are levied by the county legislative body, but are authorized by the state's general law, codified in the *Tennessee Code Annotated*. Counties receive substantial funds from the state taxes on the sale of gasoline and diesel fuel, taxes which the counties do not levy, but receive a share according to a formula in the general law. Counties may supplement these sources of revenue through private acts which levy additional taxes such as a hotel/motel tax. This chapter summarily discusses the chief sources of county revenue. For more detailed information regarding individual revenue sources, consult the current edition of the *County Revenue Manual* published by CTAS and the CTAS compilation of private acts for each county. For more detailed information concerning county property taxes, consult the current edition of *County Property Tax Manual* published by CTAS.

Property Taxes and In Lieu of Tax Payments

Property Tax

Legal Authority. TENN. CONST., art. II, § 28, T.C.A., title 67, chapter 5.

Description of the Tax. All property, real and personal, tangible and intangible, must be assessed for taxation by the state or its political subdivisions unless the property is declared to be exempt by some express provision of Tennessee law. T.C.A. § 67-5-101.

For purposes of taxation, property shall be classified into three classes: real property, tangible personal property, and intangible personal property. TENN. CONST., art. II, § 28. Real property is classified into four subclassifications and is assessed as a percentage of value as follows:

1.	Public Utility Property	55%
2.	Industrial and Commercial Property	40%
3.	Residential Property	25%
4.	Farm Property	25%

(Note that if residential property contains two or more rental units, it is classified as Industrial and Commercial Property.)

Tangible personal property is classified and assessed as a percentage of its value as follows:

1.	Public Utility Property	55%
2.	Industrial and Commercial Property	30%
3.	All other tangible personal property	5%

(except for an individual exemption of \$7,500 of personal household goods, clothes, etc.)

Assessment. The duty to determine the value of property in Tennessee is divided between the county property assessor and the Comptroller of the Treasury. TCA § 67-5-1301. With the dissolution of the Public Service Commission, the Comptroller took over the assessment duties formerly performed by that commission. The Comptroller assesses all property of every description owned by the various utility companies such as railroad companies, telephone companies, gas companies, and express companies. In 1996, the legislature added the property of certain bus and truck companies to the list of property assessed by the Comptroller. The county property assessor assesses all other property in the state on a county-by-county basis.

Appraisals. In order to assure fairness in the property tax system, the valuations of real property are periodically reappraised. Reappraisal is done in each county by one of the following methods:

1. A six year cycle comprised of an on-site review of each parcel with updating of all real property values during the third year of the cycle if the overall level of appraisal in the jurisdiction is less than 90% of fair market value.
2. A five year cycle comprised of an on-site review of each parcel without updating or indexing of values, if approved by the assessor and county legislative body.
3. A four year cycle, if approved by the State Board of Equalization, comprised of an on-site review of each parcel without updating or indexing of values.

During the review cycle between revaluations, new improvements discovered by on-site review or otherwise are valued on the same basis as similar improvements were valued during the last revaluation or otherwise as necessary to achieve equalization. T.C.A. § 67-5-1601.

Under the Agriculture, Forest, and Open Space Land Act of 1976, which is codified in T.C.A. § 67-5-1001 *et seq.*, (known as the “Greenbelt Law”) owners of such property may make application to the county property assessor for assessment based on the property's present use value rather than on its market value for some other use. If the greenbelt status results in a tax savings and the property is later converted to a non-qualifying use, the statutes provide a method whereby the county may recapture a portion of this tax savings.

Another statutory exception provides for long-term residential owners. Except in counties with a metropolitan form of government, property which is used solely for residential purposes, which is occupied by the owner for a period of twenty-five years or more, and which is zoned for commercial use is assessed based on its value for residential purposes. T.C.A. § 67-5-601.

Property Tax Relief. Property tax relief programs have been established for certain groups of homeowners in which the state pays an amount necessary to cover a portion of the taxes due or reimburses such taxpayers for a portion of the taxes already paid on their residence. These tax relief programs are detailed in T.C.A. § 67-5-701 *et seq.*

The tax relief program for low income taxpayers sixty-five years old or older and for taxpayers who are totally and permanently disabled authorizes payment or reimbursement of taxes paid on the first \$18,000 of the full market value of the home, provided the taxpayer's annual income from all sources does not exceed an amount based on \$10,550 for tax year 1996, adjusted annually to reflect the cost of living adjustment for social security recipients as determined by the federal Social Security Administration. T.C.A. §§ 67-5-702(a)(2), 67-5-703(a)(2). The tax relief program for disabled veterans and prisoners of war authorizes payment or reimbursement of taxes paid on the first \$140,000 of the full market value of the home. There is no age or income limitation on this group of taxpayers. Applications for property tax relief must be made to the collecting official (county trustee) by the taxpayer within thirty-five days after the delinquency date. The county trustee makes a preliminary determination of eligibility and forwards the application to the state for final approval. The trustee may give the taxpayer credit for the tax relief if the balance of taxes due is paid. If a taxpayer entitled to tax relief dies after applying for or receiving tax relief, the surviving spouse is qualified for the relief. T.C.A. § 67-5-701.

Exemptions. There are numerous exemptions of certain types of property from property taxation. For a brief enumeration of these exemptions, consult the *County Revenue Manual*.

Property Tax Rate. The county property tax rate is established by the county legislative body on the first Monday in July, or as soon thereafter as practical. T.C.A. § 67-5-510.

Certified Tax Rate. Upon a general reappraisal of property as determined by the State Board of Equalization, the county property assessor must certify to the county legislative body and the governing body of each municipality in the county the total assessed value of taxable property within the county. The assessor must also furnish an estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the assessed value of deletions from the assessment roll. The county legislative body must determine and certify a tax rate which will provide the same ad valorem property tax revenue for the county as levied during the previous tax year. For the purpose of calculating the certified rate, the county legislative body must use the taxable value appearing on the roll exclusive of taxable value of properties appearing for the first time on the assessment roll. T.C.A. § 67-5-1701.

The State Board of Equalization may establish policies providing a procedure or formula for calculating the certified tax rate. Prior to final determination of the certified tax rate by the county legislative body, a proposed certified tax rate, including supporting calculations must be submitted to the executive secretary of the State Board of Equalization for review. The executive secretary has fifteen days to report on the board's review of the rate; after this period passes the county legislative body must finally determine the certified tax rate, which may be adjusted in accordance with the executive secretary's report. T.C.A. § 67-5-1701.

No tax rate in excess of the certified rate may be levied until a resolution has been approved according to the following procedure as outlined in T.C.A. § 67-5-1702:

1. The county legislative body must advertise its intent to exceed the certified rate in a newspaper of general circulation in the county. Within thirty days after the

publication, the county executive must furnish the state board of equalization an affidavit indicating that this publication has occurred.

2. A public hearing must be held on the issue of exceeding the certified rate.
3. A resolution to levy a tax rate in excess of the certified rate is adopted.

For individual county property tax rate information, consult the CTAS publication entitled *Tennessee County Tax Statistics*.

Administrator. The administration of the property tax in Tennessee is a responsibility that is shared by state, county, and city governments. Its most important elements are described as follows:

1. The State Division of Property Assessments, under the supervision of the Comptroller of the Treasury and subject to the policies, rules and regulations adopted by the State Board of Equalization, has a duty to prescribe rules and regulations approved by the comptroller which relate to the administration of duties of property assessors. T.C.A. § 67-1-202.
2. Generally, the county assessor of property appraises all non-utility property within his or her county in accordance with state requirements. The assessor identifies all taxable property on the assessment records so that tax rolls may be provided for each taxing entity within the jurisdiction. T.C.A. § 67-5-807. The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification and valuation of property for tax purposes. T.C.A. § 67-5-1402. Most municipalities do not have a separate assessor of property or local board of equalization. However, any municipality which lies within the boundaries of two or more counties may maintain an assessment office and local board of equalization separate from the county or may contract with the State Board of Equalization for assessment services. T.C.A. § 67-1-513.
3. The Assessment Appeals Commission, created by the State Board of Equalization, is the administrative board of final recourse for most complaints and appeals regarding the assessment, classification and value of property for taxation purposes. T.C.A. § 67-5-1502. Actions by the Assessment Appeals Commission are final unless the State Board of Equalization, in its sole discretion, decides to review the action of the commission within forty-five days of its final action. T.C.A. § 67-5-1502.

Collector. The county trustee collects all state, county and municipal property taxes, except when otherwise provided by law. T.C.A. § 67-1-702. A municipality is authorized to collect its own property taxes. T.C.A. § 67-5-1801.

Time Payable. State, county and municipal property taxes are payable on the first Monday in October in each year, except that certain municipalities may have a different date fixed by law when they collect their own property taxes. However, all municipal taxes collectible by the county trustee are due and delinquent at the same time as county taxes. T.C.A. § 67-1-701. The county legislative

body, by resolution, may allow the trustee to collect taxes after the tax rates are finally set, the tax rolls are received by the trustee, and the tax receipts have been prepared, but not earlier than July 11. T.C.A. § 67-1-702(b). The county trustee may (but is not required to) adopt a policy of not accepting current county real property taxes due when delinquent property taxes are owing, excepting when the obligor is in bankruptcy or a dispute exists over the responsibility for these taxes. T.C.A. § 67-5-1801(b).

Partial Payment. Any county trustee may, but is not required to, accept partial payment of property taxes after filing with the Comptroller of the Treasury a plan for acceptance of partial payments. T.C.A. § 67-5-1801(e).

Discount for Early Payment. The county legislative body may, by resolution, authorize a discount for the early payment of property taxes. Alternatives are authorized by statute. Under the first alternative, a 2% discount on current taxes is provided if paid by October 31 and a 1% discount is granted if these taxes are paid more than thirty but less than sixty days after October 1. Under the second alternative, if the county legislative body has adopted a resolution providing for early payment, that is after July 10 but before October 1, then the county legislative body may provide for a discount of 3% if property taxes are paid by July 31, 2% if paid by August 31, and 1% if paid by September 30. T.C.A. § 67-5-1804.

Commission. The commission of the county trustee for collecting property taxes is as follows:

- 6% on all sums up to \$10,000
- 4% on all sums from \$10,000 to \$20,000
- 2% on all sums in excess of \$20,000

T.C.A. §§ 8-11-110, 67-5-1904. The trustee receives a 1% commission on ad valorem taxes collected for watershed districts. T.C.A. §§ 69-7-139, 69-7-145.

Interest and Penalties. County property taxes become delinquent on March 1, following the tax due date. On March 1, and on the first day of each succeeding month, a penalty of ½% and interest of 1% are added to the amount of tax due and payable. In Shelby County, the legislative body may establish a due date other than the first Monday in October and thus may establish another date that interest and penalty begin to accrue instead of March 1. T.C.A. § 67-5-2010.

Municipal property taxes become delinquent on the delinquency date established by charter or existing law. If municipal taxes are not paid on or before the established delinquency date, a penalty of ½% and interest of 1% shall be added to the amount of the tax due and payable, beginning on the first day of March, following the tax due date and on the first day of each succeeding month. T.C.A. § 67-5-2010(b)(2).

When a reappraisal of property occurs and the property assessments are turned over to the county after October 1, no penalty and interest is added to property taxes until five months following the tax roll completion date. T.C.A. § 67-5-1608.

Distribution. County property tax collections remain in the county to be appropriated by the county legislative body for the purposes for which the tax was levied. T.C.A. §§ 67-5-102, 67-1-603, 67-5-510. However, property taxes for education (operation and maintenance), must be shared with special and municipal school districts located within the county on a weighted full-time equivalent average daily attendance basis (WFTEADA). T.C.A. § 49-3-315.

A special transportation property tax levy is authorized for any county in which only one pupil transportation system is operated and which has within its borders a city or special school district operating a system of public schools. These education transportation funds are not required to be shared with municipal or special district school systems. T.C.A. § 49-3-315.

Collection of Delinquent Taxes. The procedures for collection of delinquent real and personal property taxes are detailed in the *County Property Tax Manual*.

The following is a summary of significant duties in the assessment and collection of ad valorem property taxes. The property tax assessments for the year 2000 assessments are used as an example; however, the same calendar of activities is followed in the assessment, levy and collection of property taxes for any year.

**Timetable of Significant Dates and Activities
In the Assessment and Collection of
Ad Valorem Real Property Taxes**

January 1, 2000	Assessor makes assessments as of this date, T.C.A. § 67-5-504; assessed taxes become a first lien on property. T.C.A. § 67-5-2101.
Not later than February 1, 2000	Tax assessor should furnish owners and lessees of business personal property with a tangible personal property schedule. T.C.A. §§ 67-5-902, 67-5-903.
April 1, 2000	Greenbelt applications due. T.C.A. §§ 67-5-1005 through 67-5-1007.
May 20, 2000	Assessor must note all assessments on his or her books on or before this date, T.C.A. §§ 67-5-504, 67-5-508; taxpayers must be notified of any change in their assessments by this date. T.C.A. § 67-5-508.
June 1, 2000	Assessor turns over books to the county board of equalization by this date, T.C.A. § 67-5-304; county board of equalization commences its session. T.C.A. § 67-1-404.
1st Monday in July, 2000	County commissions fix tax rate on all properties in their jurisdiction. T.C.A. § 67-5-510. Trustee to report on all delinquent taxpayers and double assessments in the county. T.C.A. § 67-5-1903.

1st Monday in October, 2000	On or before this date, county tax rolls must be delivered to trustee, T.C.A. § 67-5-807; taxes become due and payable. T.C.A. §§ 67-1-701, 67-1-702.
On or before 1st Monday in November, 2000	County clerk or the tax assessor prepares an aggregate statement showing the value of real and personal property to forward to the Commissioner of Revenue and the mayor of each municipality. T.C.A. § 67-5-807.
March 1, 2001	2000 taxes become delinquent in all counties having less than 700,000 population. A 1/2% per month penalty and 1% interest begin to accrue. T.C.A. § 67-5-2010.
March 1, 2001	Corrections of assessments must be requested by the taxpayer prior to this date. T.C.A. § 67-5-509.
September 1, 2001	Back assessments and reassessments must be initiated prior to this date. T.C.A. § 67-1-1005.
1st Monday in September, 2001	Trustee makes a full and complete financial report of the condition of the trustee's office. T.C.A. § 67-5-1902.
January 1, 2002	Tax collectors must make final settlements and return delinquent tax lists to trustee. T.C.A. § 67-5-2006.
January 1 - 31, 2002	During this period the trustee must cause notice to be published, once a week for two consecutive weeks, that suits will be filed to enforce tax liens. T.C.A. § 67-5-2401.

January 2 (or at least 20 days before turning list over to tax attorney)	The delinquent tax list may be published. T.C.A. § 67-5-2002. This must be done at least twenty days prior to turning the tax list over to the tax attorney.
February 2 - April 1, 2002	Tax attorney must file suit during this period for enforcement of tax liens, T.C.A. § 67-5-2405; an additional 10% penalty and the additional costs accrue with the filing of such suit. T.C.A. § 67-5-2410.
April 1, 2002	Delinquent municipal real property taxes must be certified to trustee on or before this date. T.C.A. § 67-5-2005.
June 1 - July 1, 2002	Clerks collecting delinquent taxes are required to provide the trustee with a list of tax suits. T.C.A. § 67-5-2403.
April 1, 2012	All 2000 ad valorem property taxes assessed but not collected by counties are barred and discharged because of the statute of limitations. T.C.A. § 67-5-1806.

T.V.A. In Lieu of Tax Payments

Legal Authority. 16 U.S.C. § 831 *et seq.*, T.C.A. §§ 67-9-101 through 67-9-103.

Description. T.V.A. in lieu of tax payments are payments made by the Tennessee Valley Authority to the state for the purpose of replacing tax revenue which T.V.A. would otherwise pay if it were not a tax exempt federal agency. The amount of the payments is determined by federal law. 16 U.S.C. § 831(L), the T.V.A. Act.

Distribution. First \$55.2 million to the state general fund. Any amounts above \$55.2 million are distributed as follows:

1. 48.5% - State
2. 48.5% - Counties and municipalities to be allocated as follows:
 - a. 30% of the 48.5% to counties on the basis of their percentage of the state's total population.
 - b. 30% of the 48.5% to counties on the basis of their percentage that the total acreage of each county bears to the total acreage of the state.
 - c. 10% of the 48.5% to counties on the basis of their percentage of their land owned by T.V.A. compared to all the land owned by T.V.A. in Tennessee.

- d. 30% of the 48.5% to municipalities on the basis of the population that the municipality bears to the population of all municipalities in the state.
3. 3% to local governments impacted by T.V.A. construction activity on facilities to produce electric power. The impacted areas are designated by T.V.A. and payments are made during the period of construction activity and for one full fiscal year after completion of such activity. The Comptroller of the Treasury allocates the impact funds among the counties and municipalities according to a weighted population formula. If, in any fiscal year, there are remaining impact funds after allocation, or there are no impacted areas, CTAS may receive an amount not greater than 30% of the funds, with up to 20% any remaining funds allocated to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for an annual inventory of statewide public infrastructure needs, and additional 20%, if available, to TACIR for study purposes, with the remainder then distributed according to 2 above. T.C.A. § 67-9-102.

Municipal Electric and Gas System Tax Equivalent Payments

Legal Authority. T.C.A. §§ 7-52-301 through 7-52-310, 7-39-401 through 7-39-406.

Description. Every municipality may pay from its electric system and gas system revenues, each fiscal year, an amount for payments in lieu of taxes (“tax equivalents”) on its electric and/or gas system property and operations. The amount of the payment should represent the fair share of the cost of government as determined by the municipality's governing body, subject to the provisions of T.C.A. §§ 7-39-404 and 7-52-304 relative to the amounts of such payments.

Distribution. Contracts for distribution of municipal electric tax equivalent payments are authorized by T.C.A. § 7-52-306. In the absence of an agreement, a formula for apportionment of municipal electric system tax equivalent payments wherein the county (or counties) receives 22.5% of the total tax equivalent payment is provided in T.C.A. § 7-52-307.

Severance Taxes

Coal Severance Tax

Legal Authority. T.C.A. §§ 67-7-101 through 67-7-110.

Description. The state levies a severance tax of 20¢ per ton on all coal products severed from the ground in Tennessee. T.C.A. § 67-7-104. “Coal products” means coal ore and any other substance that might be severed from the earth by the process of producing salable coal, by whatever method of severance used. T.C.A. § 67-7-101.

Distribution. According to T.C.A. § 67-7-102, the tax is collected by the Tennessee Department of Revenue and is distributed as follows:

1. 3% and all penalties and interest collected, are retained by Department of Revenue and credited to its current service revenue to cover the administration expenses and tax collection.
2. 97% to the county in which the coal products were severed.
 - a. 50% for the educational systems of the county.
 - b. 50% for county highways and stream cleaning systems.
T.C.A. § 67-7-110.

Oil and Gas Severance Tax

Legal Authority. T.C.A. §§ 60-1-301 through 60-1-302.

Description. The state levies a tax of 3% of the sales price of all gas and oil removed from the ground in Tennessee. T.C.A. § 60-1-301.

Distribution. The Tennessee Department of Revenue collects the tax and distribution is made as follows:

1. 1/3 to the county where the wellhead is located.
2. 2/3 to the state general fund. T.C.A. § 60-1-301.

County Mineral Severance Tax (General Law)

Legal Authority. T.C.A. §§ 67-7-201 through 67-7-212.

Description. This is a local option tax wherein a county legislative body by resolution adopted by a 2/3 majority vote may levy a tax on all sand, gravel, sandstone, chert and limestone severed from the ground within the county. T.C.A. §§ 67-7-201, 67-7-212. The county legislative body sets the rate, but the rate cannot exceed 15¢ per ton. T.C.A. § 67-7-203. A tax authorized under this section may be repealed by a resolution passed by a 2/3 majority of the county legislative body. T.C.A. § 67-7-201.

Distribution. The Tennessee Department of Revenue collects this tax. T.C.A. § 67-7-204. All revenues collected, less administrative expenses, are remitted to the county trustee quarterly and become a part of the county road fund. T.C.A. § 67-7-207.

County Mineral Severance Tax (Private Act)

Several counties have enacted mineral severance taxes by private act. Private acts on this subject are no longer authorized, but the private acts on this subject enacted prior to June 5, 1984, remain in effect, except that the rate cannot exceed 15¢ per ton. T.C.A. §§ 67-7-209, 67-7-212. The minerals subject to the tax are delineated in each county's private act, along with provisions regarding rate, collection and distribution of the tax proceeds. Currently, the following counties have a mineral

severance tax levied by private act: Benton, Carroll, Carter, Decatur, Giles, Humphreys, Roane, Rutherford, Unicoi, Weakley, White, and Williamson. Annual summaries of the status of these taxes are provided in the CTAS publication entitled *Tennessee County Tax Statistics*.

Sales and Use Taxes

State Sales and Use Tax

Legal Authority. T.C.A., title 67, chapter 6, parts 1 through 6.

Description. The sales and use tax is imposed upon every person who: (1) engages in the business of selling tangible personal property at retail in this state; (2) uses or consumes in this state any item or article of tangible personal property; (3) is the recipient of certain specified things or services or who rents or furnishes any of the things or services taxable; (4) stores for use or consumption in this state any item or article of tangible personal property; (5) leases or rents such property within the state, or charges admission, dues or fees, or sells space as defined in the statutes dealing with the sales tax; (6) charges a fee for subscription to television services; (7) leases or rents tangible personal property; (8) performs specifically taxable services; (9) sells or uses admissions, dues and fees on amusements; and (10) certain other specifically listed taxable activities. T.C.A. § 67-6-201. The taxable privileges listed above are modified by numerous credits and exemptions which are outlined in the *County Revenue Manual*. This tax is included in our summary as a source of county revenue because the state sales and use tax is the source of most of the state funds allocated to county school systems under the Better Education Program (BEP). Counties do not receive a direct allocation from this tax as do municipalities.

The Tennessee Department of Revenue administers the tax which is imposed upon every dealer engaging in a taxable privilege under this chapter. T.C.A. § 67-6-501. The current general state sales and use tax rate is 6%. T.C.A. §§ 67-6-202 through 67-6-205. However, a number of statutes provide for variation of rates for different products. Sales and use tax at a rate of 1% is imposed on water sold to or used by manufacturers, and at a rate of 1½% on gas, electricity, fuel oil, coal and other energy fuels used by manufacturers. The tax rate is 1½% for electricity, liquefied gas, coal, wood, or fuel oil used by a farmer or nurseryman for growing or producing horticultural, greenhouse, or nursery crops. T.C.A. §§ 67-6-206, 67-6-218. The consumption, distribution and storage of aviation fuel is taxed at a rate of 4½%. T.C.A. § 67-6-217. The rate is 3¾% for sales of tangible personal property to common carriers for use outside this state. T.C.A. § 67-6-219. Sales and use tax with respect to interstate telecommunications services sold to businesses is imposed at a rate of 3.5%. T.C.A. § 67-6-221. Certain portions of monthly charges for television services are taxed at differing state and local rates. T.C.A. §§ 67-6-226 and -227.

Distribution. State sales and use tax revenues are earmarked and allocated as follows:

1. 29.0246% to the state general fund.
2. 65.0970% exclusively for educational purposes.

3. 4.5925% to incorporated municipalities from which an allocation is made to the University of Tennessee for operating the municipal technical advisory service.
4. 0.3674% to the department of revenue for sales tax administration.
5. 0.9185% to a sinking fund for paying interest and principal on state bonds.

T.C.A. § 67-6-103.

Local Option Sales Tax

Legal Authority. T.C.A., title 67, chapter 6, part 7.

Description. Any county, by resolution of its legislative body, or any city or town by ordinance of its governing body, may levy a sales tax on the same privileges subject to the state sales tax. T.C.A. § 67-6-702. No local sales tax or increase in the local sales tax is effective until it is approved in an election in the county or city levying it. T.C.A. § 67-6-705. If the county has levied the tax at the maximum rate, no city in the county may levy a sales tax. If a county has a sales tax of less than the maximum, a city may levy a tax equal to the difference between the county rate and the maximum. If a city passes an ordinance to increase its sales tax rate above the county rate, the city ordinance is suspended for forty days during which time the county legislative body may pass a resolution to increase the county tax. If such a resolution is passed, the ordinance remains suspended until a county-wide referendum is held. If the referendum is successful, the city ordinance is dead. However, if the referendum is not successful, the city may proceed with a city referendum on the matter. T.C.A. § 67-6-703. If the city referendum passes, the city receives all revenues generated by the increase above the county level - the first half is not earmarked for education. However, if the county, at a later date, raises its sales tax rate up to the level of the city rate, then the distribution formula outlined below would apply to the entire local option portion of the sales tax. A resolution or ordinance levying the sales tax may be initiated by a petition of 10% of the registered voters of the taxing jurisdiction. T.C.A. § 67-6-707. The tax, once levied, is perpetual unless the resolution or ordinance establishes a specific termination date or unless the tax is repealed in the same manner as it was levied. T.C.A. §§ 67-6-708, 67-6-709. The same exemptions generally apply to the local option sales tax as apply to the state sales tax. The local sales tax cannot exceed 2.75%, and applies only up to the first \$1,600 on the sale or use of any single article of personal property. The old law provided for a \$5.00 or \$7.50 single item limit on the sale or use of any single article of personal property. These limits remain effective unless and until the county legislative body removes these old limits by a resolution, whereupon the local option tax will apply to the first \$1600 on the sale or use of any single article of personal property. T.C.A. § 67-6-702.

Distribution. Local option sales tax revenue is distributed as follows:

1. 50% specifically for education, to be distributed in the same manner as the county property tax for school purposes.

2. 50% distributed on the basis of where the sale occurred. Taxes collected inside a municipality are distributed to that municipality, and taxes collected in unincorporated areas are distributed to the county. Counties and cities may contract with each other for distribution of the half not allocated to school purposes. T.C.A. § 67-6-712.

Public Chapter 1101 of 1998, which was a major reform of the annexation and incorporation laws, had an impact upon the way the local option sales tax is distributed among cities and counties. It included a “hold harmless” provision to protect county revenue sources. When a city annexes territory or a new city incorporates, revenue amounts generated in that area by local option sales taxes which had been received by the county prior to the annexation or incorporation continue to go to the county for fifteen years after the date of the annexation or incorporation. During that time, any increase in the situs based portion of the revenues generated in the area would be distributed to the annexing or incorporating municipality. Note that this does not affect the distribution of the first half of the local option sales tax which would continue to go to education funding. If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

Petroleum Products and Alternative Fuel Taxes

Legal Authority. T.C.A. § 67-3-1201, *et seq.*

Gasoline Tax

Description. The gasoline tax is a privilege tax imposed on all gasoline, fuel alcohol (as defined in T.C.A. § 67-3-1203) and substitutes therefor imported into this state; the tax being levied when the product first comes to rest in this state, subject to certain exceptions. T.C.A. § 67-3-1301. The tax is administered by the Department of Revenue. T.C.A. § 67-3-2001.

Rate: 20¢ per gallon. T.C.A. § 67-3-1301.

Distribution. The distribution formula for the gasoline tax is as follows:
(Some minor distributions are omitted)

1. Amount necessary (if any) to fund state debt through sinking fund account. T.C.A. §§ 67-3-2001, 9-9-102, 9-9-105.
2. 9¢ of the 20¢ gasoline tax is distributed as follows:
 - a. 28.6% (less 2% of this amount for Department of Revenue administration expenses) to the county aid fund for county road purposes (prior to this distribution, the County Technical Assistance Service is allocated \$28,250 per month), which is divided as follows:
 - (1) 50% is divided equally among the 95 counties;
 - (2) 25% is divided among the counties on the basis of population; and
 - (3) 25% is divided among the counties on the basis of geographical area.

- b. 14.3% (less 1% of this amount for Department of Revenue administration expenses) to the various municipalities and the municipal street aid fund according to population.
 - c. Remainder (less 2% of this amount for Department of Revenue administration expenses) to the state highway fund. T.C.A. §§ 67-3-2001, 54-4-103.
- 3. 2¢ of the 20¢ gasoline tax is distributed as stated in 2. above, except to receive its portion the county must appropriate funds for road purposes from local revenue sources in an amount not less than the average of the preceding five fiscal years (bond issues are excluded from calculation). If this amount is less than the five year average, the state allocation will be decreased by the difference between the five year average and the current amount appropriated from local sources. These funds must be used for resurfacing and upgrading county roads. T.C.A. § 67-3-617.
- 4. 3¢ of the 20¢ gasoline tax is distributed as follows:
 - a. ~~66~~**b**% to the counties as other county aid funds are distributed (less 1% of this amount to the Department of Revenue for administration expenses), to be used for resurfacing and upgrading county roads.
 - b. ~~33~~**a**% to the municipalities as other municipal aid funds are distributed (less 1% of this amount to the Department of Revenue for administration expenses). T.C.A. § 67-3-617.

However, 1¢ of this 3¢ is subject to the local contribution rule as specified in paragraph 3 above.

- 5. 6¢ is distributed to the state highway fund.

Diesel Tax

Description. The diesel tax replaces the former motor vehicle fuel use tax. This tax is a privilege tax imposed on the users of diesel fuel (as defined in T.C.A. § 67-3-1203) within this state, with certain exceptions such as fuel dyed in accordance with internal revenue service regulations. T.C.A. § 67-3-1302. The tax is administered by the Tennessee Department of Revenue. T.C.A. § 67-3-2005.

Rate: 17¢ per gallon. T.C.A. § 67-3-1302.

Distribution. The tax is distributed as follows:

- 1. 1.62% to the state general fund.
- 2. 24.75% to the counties to become a part of the county highway fund in the following manner:
 - a. 50% equally among all counties;
 - b. 25% on the basis of population; and
 - c. 25% on the basis of area.

3. 12.38% to the municipalities on the basis of population, with minor exceptions.
4. 61.25% to the state highway fund. T.C.A. § 67-3-2005.

Special Privilege Tax on Petroleum Products

Description. The special privilege tax on petroleum products is in addition to the gasoline and diesel taxes and is imposed on all petroleum products, subject to certain exceptions. T.C.A. § 67-3-1303. This tax is administered by the Tennessee Department of Revenue. T.C.A. § 67-3-2006.

Rate: 1¢ per gallon. T.C.A. § 67-3-1303.

Distribution. The special tax on petroleum products is distributed as follows:

1. 2% to general fund for administrative purposes
2. \$12,017,000 per year to the Local Government Fund
 - a. \$381,583 monthly to county highway departments on the basis of county population.
 - b. \$619,833 monthly to cities on the basis of their population, less \$10,000 monthly to the Center for Government Training for in-service training of local government officials and employees.
3. Remainder to the state highway fund. T.C.A. § 67-3-2006.

Liquefied Gas Tax

Description. This tax is on liquefied gas used for the propulsion of motor vehicles on the public highways of this state. Governmental agencies are exempt. This tax is paid in advance annually by the owner of each motor vehicle licensed in Tennessee using liquefied gas as fuel. Out of state users pay upon delivery of the liquified gas into the fuel supply tank of a motor vehicle. T.C.A. §§ 67-3-2201 through 67-3-2212.

Rate: 14¢ per gallon T.C.A. § 67-3-2202.

Distribution. The distribution of the liquefied gas tax is as follows:

1. 9¢ of the 14¢ distributed as follows:
 - a. 1.58% to the general fund.
 - b. 28.28% to the counties to become a part of the county highway fund as follows:
 - (1) 50% equally among all counties;

- (2) 25% on the basis of population; and
 - (3) 25% on the basis of area
 - c. 14.14% to the municipalities on a population basis, with minor exceptions.
 - d. 56% to the state highway fund.
- 2. 3¢ of 14¢ distributed to the state sinking and highway funds.
 - 3. 1¢ of 14¢ distributed as follows:
 - a. 66~~b~~% to the counties as other county aid funds are distributed, less 1% to the Department of Revenue for administration expenses.
 - b. 33~~a~~% to the municipalities as other municipal aid funds are distributed, less 1% to the Department of Revenue for administration expenses.
 - 4. 1¢ of 14¢ is distributed to the state highway fund.

T.C.A. § 67-3-2008.

Compressed Natural Gas

Description. A tax on the privilege of using compressed natural gas for the propulsion of motor vehicles on the public highways of this state. Governmental agencies are exempt. T.C.A. § 67-3-2213.

Rate. 13¢ per gallon. For the purpose of determining the tax, a gallon equivalent factor of 5.66 pounds per gallon is used.

Distribution. Same as the diesel tax described above. T.C.A. § 67-3-2005.

Highway User Fuel Tax

Description. The highway user fuel tax is imposed on owners and operators of qualified motor vehicles engaged in interstate commerce in or through Tennessee. The amount of tax payable to the state is determined by dividing the total number of miles traveled in the state by the average number of miles traveled per gallon of gasoline or diesel fuel, or the per gallon equivalents of alternative fuels and multiplying the result by the rates of the tax per gallon on the particular fuel used. T.C.A. §§ 67-3-2302, 67-3-2304.

Distribution. Same as the taxes for the particular fuels which are used by the owner or operator.

Gasoline Tax for Local Transportation Funding

Legal Authority. T.C.A. §§ 67-3-2101 through 67-3-2112.

Description. A tax levied by a particular county, municipality, or metropolitan government at their option on the privilege of selling gasoline. The proceeds must be used to support public

transportation services. This tax only becomes effective after a favorable referendum vote is taken in the locality for which it is proposed. A county levy precludes a municipal levy within that county.

Rate. 1¢ per gallon. T.C.A. § 67-3-2104.

Distribution. The tax is distributed to the county or municipality which levies the tax; however, unless the county and any and all municipalities within it provide otherwise by contract, any county which levies this tax must apportion it so that any municipality that provides public transportation services receives, as a minimum, a percentage of the proceeds equal to its percentage of the county's population. T.C.A. § 67-3-2112.

Alcohol and Tobacco Taxes

Alcoholic Beverage Tax

Legal Authority. T.C.A. §§ 57-3-301 through 57-3-307.

Description. This tax is on the sale or distribution by sale or gift of wine and distilled spirits with an alcoholic content of more than 5% by weight. T.C.A. § 57-3-301.

Rates: \$1.10 per gallon (29¢ per liter) of wine and \$4 per gallon (\$1.06 per liter) of distilled spirits. T.C.A. § 57-3-302.

Distribution. The tax is distributed as follows:

1. Counties where a distillery is located receive 4¢ per liter of the tax imposed on the sale of distilled spirits.
2. 82.5% of the remainder to the general fund.
3. 17.5% of the remainder to counties (general fund) as follows:
 - a. 75% of this amount is apportioned according to county population.
 - b. 25% of this amount is apportioned according to county area.
 - c. However, 30% of the amount distributed to counties with a population of more than 250,000 is distributed to cities in the county with population over 150,000. T.C.A. § 57-3-306.

Mixed Drink Tax (Liquor By the Drink Tax)

Legal Authority. T.C.A. §§ 57-4-301 through 57-4-308.

Description. Two related taxes are considered together under this topic. Both taxes are on the privilege of selling alcoholic beverages at retail in this state for consumption on the premises. One

tax is an annual fixed amount based on the type and size of the business; the other tax is a percentage levy (15%) based on the sales price of alcoholic beverages sold for consumption on the premises. T.C.A. § 57-4-301.

Distribution. These two taxes are distributed as follows:

1. The fixed annual tax goes to the state general fund for state purposes. T.C.A. § 57-4-301.
2. The gross receipts tax is distributed as follows:
 - a. 50% to the state general fund to be earmarked for educational purposes.
 - b. 50% to local political subdivisions:
 - (1) 50% in the same manner as the county property tax for schools is expended. Except in Bedford County, municipalities which do not operate their own school systems separate from the county must remit ½ of their proceeds from this tax to the county school fund.
 - (2) 50% divided as follows:
 - (a) Collections in unincorporated areas, to the county general fund.
 - (b) Collections in municipalities, to those municipalities.
 - (3) The 50% of the tax allocated to local political subdivisions which is collected in a municipality which is a premier tourist resort goes to the schools of that municipality. T.C.A. § 57-4-306.

Beer Tax and Beer Permit Privilege Tax

Legal Authority. T.C.A. §§ 57-5-201 through 57-5-208.

Description. The beer tax is a privilege tax paid by every person, firm, corporation, joint stocks company, syndicate or association in this state storing, selling, distributing or manufacturing beer and alcoholic beverages of less than 5% alcoholic content by weight. T.C.A. § 57-5-201. The beer tax is a state tax and no county or municipality may levy any like tax. Persons or businesses that sell or distribute beer collect this tax and pay over the sums collected to the Department of Revenue on or before the twentieth day of the month following the month in which the tax accrues. T.C.A. §§ 57-5-201, 57-5-202, 57-5-203.

Rate. \$3.90 per barrel. T.C.A. § 57-5-201.

Distribution. The beer tax is distributed as follows:

1. The first \$3.40 of the \$3.90 tax rate:
 - a. Up to 4% to the Department of Revenue to defray the expenses of administration of this tax. T.C.A. § 57-5-202.

b. Of the remainder

- (1) 10.05% to the several counties equally for general purposes.
- (2) 10.05% to the incorporated municipalities according to population for general purposes.
- (3) 0.41% to the department of mental health and mental retardation to assist municipalities and counties in carrying out the provisions of the "Comprehensive Alcohol and Drug Treatment Acts of 1973."
- (4) 79.49% to the state general fund. T.C.A. § 57-5-205.

2. \$0.50 of the \$3.90 tax to the state highway fund to be used to fund programs for the prevention and collection of litter and trash. T.C.A. § 57-5-201.

Wholesale Beer Tax

Legal Authority. T.C.A. §§ 57-6-101 through 57-6-118.

Description. This is a state levied tax on the sale of beer and similar alcoholic beverages of not more than 5% alcoholic content by weight, wine excepted, at wholesale. T.C.A. § 57-6-102.

Rate. 17% of the wholesale price. T.C.A. § 57-6-103.

Distribution. The tax collected is distributed to the county or municipality of the retailer's place of business, less 3% commission for the wholesaler and ½% remitted to the Department of Revenue for administration of the tax. The tax is remitted to the municipality if retailer's place of business is within the city's or town's boundary; otherwise, the tax is remitted to the county of the retailer's place of business. T.C.A. § 57-6-103.

Public Chapter 1101 of 1998, which was a major reform of the annexation and incorporation laws, had an impact upon the way the wholesale beer tax is distributed among cities and counties. It included a "hold harmless" provision to protect county revenue sources. When a city annexes territory or a new city incorporates, revenue amounts generated in that area by the wholesale beer tax which had been received by the county prior to the annexation or incorporation continue to go to the county for fifteen years after the date of the annexation or incorporation. During that time, any increase in the situs based portion of the revenues generated in the area would be distributed to the annexing or incorporating municipality. If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

Tobacco Tax

Legal Authority. T.C.A. §§ 67-4-1001 through 67-4-1025.

Description. This is a special state-levied privilege tax imposed on every dealer or distributor of cigarettes and other tobacco products. T.C.A. § 67-4-1002. However, the tax is passed on to the consumer. T.C.A. § 67-4-1003. The rate of the tax is 6½ mills per cigarette or 13¢ per 20 cigarette pack and 6% of the wholesale price on all other tobacco products or tobacco substitutes. T.C.A. §§

67-4-1004, 67-4-1005. This state tax is included in this chapter on county revenue sources because the revenue from this tax is earmarked for public education, grades one through twelve. T.C.A. § 67-4-1025(b).

Motor Vehicle Taxes

Motor Vehicle Title and Registration Taxes

Legal Authority. T.C.A., title 55, chapters 1 through 6.

Description. Before operating any motor vehicle upon the streets or highways of this state, each vehicle must be registered (subject to certain exceptions). The registration fee is a privilege tax upon operation and is administered by the Commissioner of Revenue, and collected by the county clerk of the county of the owner's residence or the county wherein the vehicle is based or to be operated. A non-resident may apply directly to the Department of Revenue for registration. T.C.A. §§ 55-4-101(c), 55-6-105. Terms used in administering titles and registrations are defined in T.C.A. §§ 55-1-101 through 55-1-121.

Distribution. These state registration fees and taxes are retained by the state, with 98% going to the state highway fund and 2% going to the state general fund. T.C.A. § 55-6-107.

Mobile Home Registration Fee

Legal Authority. T.C.A. § 55-4-111.

Description. The county clerk collects a mobile home registration fee. The amount of the fee varies according to the length and width of the mobile home. T.C.A. § 55-4-111.

Distribution. The fees are distributed as follows:

1. The first \$1 to fund police pay supplement fund. T.C.A. § 55-4-111.
2. 5% of remaining revenue - state
3. 95% of remaining revenue - county and city
 - a. ½ of which is distributed in the same manner as the property tax for school purposes.
 - b. ½ of which goes to the county or city general fund (depending on the location of the mobile home), or as such county and city by contract provide. T.C.A. § 55-6-107.

County Motor Vehicle Privilege Tax (Wheel Tax)

Legal Authority. T.C.A. § 5-8-102.

Description. Counties may levy a privilege tax on motor vehicles, commonly called a “wheel tax.” The tax may be levied by one of the following methods: (1) by passage of a resolution by a 2/3 vote of the county legislative body at two consecutive regular county legislative body meetings; (2) by passage of a resolution by the county legislative body by a regular majority with approval and referendum provided for in the resolution; and (3) by private act. Notwithstanding a population classification exception, the resolution is subject to a referendum if a petition signed by a number of registered voters equal to 10% of the number of voters in the last gubernatorial election is filed with the county election commission within thirty days of passage. T.C.A. § 5-8-102(b)(1).

Distribution. Distribution of these tax revenues may be for any county purpose specified in the private act or resolution levying the tax.

Business Taxes

Business Tax

Legal Authority. T.C.A. §§ 67-4-701 through 67-4-729.

Description. Certain businesses must pay a privilege tax based on gross receipts in lieu of *ad valorem* taxes on inventory of merchandise held for sale or exchange. Definitions are located in T.C.A. § 67-4-702. Each county and/or incorporated municipality in which a business, business activity, vocation or occupation is conducted may levy a business tax, not exceeding the rates established by state law. T.C.A. § 67-4-704. The county clerk collects the tax. Every affected business must register with the county clerk prior to engaging in business. T.C.A. § 67-4-706. County clerks and city tax collectors have the option of retaining an attorney or other agent for the purposes of collecting delinquent business taxes. T.C.A. § 67-4-719.

There are five classifications of businesses established by the business tax laws, each with different rates. Class Five includes industrial loan companies and is only taxable by the state. Foreign businesses filing within Class Four must execute and file a bond with the county clerk in an amount sufficient to pay the anticipated business tax liability for the balance of the tax period for which the license applies. T.C.A. § 67-4-707. Traveling photographers must file a \$100 deposit with the county clerk. T.C.A. § 67-4-729.

The rate calculated for the business tax is based on a percentage of gross receipts (which varies among the classifications) as adjusted for various credits and deductions. However, there is a minimum annual \$15 license fee. T.C.A. § 67-4-709.

Distribution. Each collector of each county must pay the commissioner 15% of the total amount collected. However, the county clerk is not required to remit the 15% of any amount the clerk collects as a result of a local field audit and related collection effort. T.C.A. § 67-4-724.

Excise Tax Applied to Banks

Legal Authority. T.C.A. §§ 67-4-2001 through 67-4-2017

Description. This is a state tax on the net earnings of all state chartered banks, national banks, and state and federally chartered savings and loans doing business in Tennessee. This tax applies to other corporations doing business in Tennessee, but only the portion of revenue received from banks and savings and loan associations is distributed to counties and municipalities. T.C.A. § 67-4-2017. Net earnings is defined in T.C.A. § 67-4-2006. The tax rate is 6% of net earnings. T.C.A. § 67-4-2007.

Distribution. Three percent of the net earnings of the bank and the net earnings of a financial institution unitary business determined on a combined basis for the fiscal year second preceding the year in which distribution is made, less 7% of the ad valorem taxes paid by the bank or financial institution unitary business on its real property and tangible personal property in that fiscal year, is allocated between the county and the municipal government where the office of the bank or financial institution unitary business is located in the same proportion as the property tax rate of each taxing jurisdiction bears to the sum of the property tax rates. Other adjustments to this basic formula are made to ensure minimum payments and consideration of branch banks in other counties. The balance is distributed to the state general fund. T.C.A. § 67-4-2017.

Other Taxes

Hall Income Tax

Legal Authority. T.C.A. §§ 67-2-101 through 67-2-121.

Description. This is a tax on income derived from stocks and bonds, as defined in T.C.A. §§ 67-2-101 and 67-2-102. There are numerous exemptions, including a \$1,250 personal exemption on individual returns and \$2,500 on joint returns. T.C.A. § 67-2-104. The tax is collected by the Department of Revenue at a rate of 6% per annum. T.C.A. § 67-2-102.

Distribution. The tax is distributed as follows:

1. Up to 10% of the first \$200,000 of taxes collected and 5% of amounts over \$200,000 go to the Department of Revenue for administration of the tax. T.C.A. § 67-2-117.
2. The taxes collected on income from stocks and bonds after deducting administration expenses are distributed as follows:
 - a. 5/8 to the state general fund;
 - b. 3/8 to the counties and municipalities of the state. If the taxpayer resides inside of the corporate limits of a municipality, then to that municipality; but if the taxpayer resides outside of any municipal limits, then to the county of the taxpayer's residence. T.C.A. § 67-2-119.

Hotel/Motel Tax

Approximately sixty counties have levied a tax on the privilege of occupancy of hotel and motel rooms and similar space. In most counties, this levy has been authorized by private act. Davidson County utilized a general law, T.C.A. § 7-4-101, *et seq.* (known as the Tourist Accommodation Tax) applicable only to counties with a metropolitan form of government.

The rate of the tax varies according to the terms of the various acts. In 2000 the lowest rate was 2% and the highest 10% of the price of the lodgings. The administration and collection procedures and the use of the tax proceeds vary from county to county; consequently, each county's private act or the public act applicable to counties with a metropolitan form of government must be consulted for details. A summary of these acts is provided annually in the CTAS publication, *Tennessee County Tax Statistics*.

After May 12, 1988, any private act which authorizes a city or county, except Rutherford, Shelby and Williamson counties, to levy a hotel/motel tax must limit its application as follows:

1. A city shall only levy such tax on occupancy of hotels located within its municipal boundaries.
2. A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city; and
3. A county shall only levy such tax on occupancy of hotels within its boundaries but outside of the boundaries of any municipality which has levied a tax on such occupancy prior to the adoption of such tax by the county. T.C.A. § 67-4-1425.

State Litigation Tax

Authority. T.C.A. §§ 67-4-601 through 67-4-606, 16-15-5007, 16-15-5008.

Description. The General Assembly has provided a privilege tax on litigation, collected upon the commencement of a civil action, a finding or plea of guilty or submission to a fine in a criminal action, the filing of an appeal or writ of error or certiorari, judgment against the defendant in any original civil action brought by a city, county or the state or upon judgment or final decree against the appellee when the appellant is a city, county or the state. Such tax is administered by the Commissioner of Revenue and collected by the clerks of Supreme Court, Court of Appeals, circuit courts, criminal courts, probate courts, county court, courts of law and equity, chancery courts, general sessions courts, city courts and any other inferior courts the General Assembly may create.

The following are state privilege taxes upon litigation:

1. Civil suits in Courts of Record
T.C.A. § 67-4-602(a), (e), (f) \$ 23.75
2. Civil suits in General Sessions
T.C.A. § 67-4-602(a), (e), (f) \$16.75

T.C.A. § 16-15-5007	<u>+\$1.00</u>
Total in General Sessions	\$17.75

3. Criminal cases in Courts of Record
T.C.A. § 67-4-602(b), (e) \$29.50
4. Criminal cases in General Sessions
T.C.A. § 67-4-602(b), (e) \$ 29.50

In addition, in all criminal cases in any state, county or municipal court for any violation of title 55, chapter 8, or for any violation of any ordinance governing the use of a public parking space there is levied an additional state litigation tax of \$1.00. Provided however that the only litigation or privilege tax collected for a violation of any ordinance governing use of a public parking space shall be this \$1.00 tax. T.C.A. § 67-4-602(f).

Distribution. These various taxes are distributed as follows:

1. The first \$2 of the litigation tax for criminal cases is paid to the state treasury and used by the Department of Education to provide driver's education in the public schools and \$2.75 of the litigation tax for criminal cases is paid to the state treasury to be used as provided in T.C.A. § 40-14-207 (defense costs of indigent). T.C.A. § 67-4-602(b).
2. The \$2.50 tax in all criminal and civil cases which is authorized by T.C.A. 67-4-602(e) is deposited in the state general fund, notwithstanding the provisions of T.C.A. § 67-4-606.
3. The \$1 tax levied on civil cases in general sessions court is used:
 - a. 50% to pay the cost of expenses the Administrative Director of the Courts will incur in serving the general sessions judges; and
 - b. 50% to pay the cost of retirement pay for retired general sessions judges. T.C.A. § 16-15-5007.
4. The \$10 litigation tax in civil cases in courts of record, the \$3 litigation tax in civil cases in general sessions, and the \$1 tax on moving violations and parking tickets, levied according to T.C.A. § 67-4-602(f), shall be deposited into the civil legal representation of indigents fund authorized and created under T.C.A. § 16-3-808.
5. The remaining proceeds of \$21.25 of the criminal litigation tax and the \$11.25 tax on civil cases are divided as follows:
 - a. 0.08% for operation of Tennessee Corrections Institute;
 - b. 11.12% to general fund to be used by Department of Education and Department of Safety to promote driver education and highway safety as follows:

- (1) 75% to Department of Education
 - (2) 25% to Department of Safety.
 - c. 43.71% to be held in the state treasury as used as follows:
 - (1) 72.5% to the criminal injuries compensation fund; and
 - (2) 27.5% to victims of crime assisted by the fund established pursuant to T.C.A. § 9-4-205
 - d. 12.06% for costs of retirement benefits for county judges;
 - e. 23.74% for costs of retirement benefits for county officials; and
 - f. 1.64% for state court clerks' conference.
6. \$1 of the tax on litigation in criminal cases is earmarked for electronic fingerprint imaging systems for local law enforcement agencies and the TBI.
 7. Remainder to state general fund to be used as follows for all fiscal years subsequent to the fiscal year ending June 30, 1986:
 - a. 27.5% to the victims of crime assistance fund created pursuant to T.C.A. § 9-4-205; and
 - b. 72.5% to the criminal injuries compensation fund. T.C.A. § 67-4-606.

County Litigation Taxes

Authority. T.C.A. §§ 67-4-601, 16-15-5006.

Description. Counties have authority to levy a local litigation tax up to the amount levied as state litigation tax. This local litigation tax may be levied by private act, by resolution of the county legislative body, or by a combination of private acts and county legislative body resolutions. Clerks of the various courts to which such tax applies as specified in the private act or resolution collect the local litigation tax. The private acts and local resolutions of each individual county must be consulted for that county's litigation tax rate.

In addition to matching the state litigation tax, T.C.A. § 16-15-5006 authorizes counties, except counties having a population in excess of 450,000, to levy a litigation tax of up to \$6.00 per case for each case filed in general sessions court or in a court where the general sessions judge serves as judge, except juvenile court, by resolution passed by a 2/3 vote of the county legislative body, proclaimed by the presiding officer and certified to the secretary of state. This statute also contains a provision allowing the litigation tax to be raised above \$6.00 if in any fiscal year the proceeds of the tax do not raise sufficient revenue to fund the salary, under the circumstances specified in the statute. *See* Op. Tenn. Att'y Gen. U94-130.

In the 2000 General Assembly, the legislature passed a general law to authorize counties to levy an additional local privilege tax on litigation in all civil and criminal cases instituted in the county, not including those instituted in municipal court. The new tax may be levied by a resolution passed by a two-thirds vote of the county legislative body. The additional tax cannot exceed \$10 per case. Proceeds from this tax must be used exclusively for purposes of jail or workhouse construction, re-construction or upgrading, or to retire debt issued for those purposes. The law

contains a sunset provision that causes the tax levy to cease once the costs of the project have been paid or the debt for the project has been retired. Public Acts of 2000, Chapter 886.

Not including the tax authorized by Chapter 886 of the Public Acts of 2000, the maximum local litigation tax in all counties except Davidson, Knox and Shelby, may be summarized as follows:

Civil cases in general sessions court	\$ 23.75
Criminal cases in general sessions court	35.50
Civil cases in courts of record	23.75
Criminal cases in courts of record	29.50

Distribution. Distribution of the county litigation taxes which are to match the state levy may be used for any county purpose or purposes specified in the private acts or resolutions. The county litigation tax authorized by T.C.A. § 16-15-5006 is earmarked for the salary of the general sessions judge.

Marriage License Taxes

Authority. T.C.A. §§ 67-4-411, 67-4-503, 67-4-505.

Distribution. Two state privilege taxes on marriage and a local option privilege tax on marriage may be levied in an amount up to \$5.00 by resolution of the county legislative body. The administrator of the state tax is the Commissioner of Revenue. The collector of both state and local marriage taxes is the county clerk.

The rate of these taxes is as follows:

1. State privilege tax, T.C.A. § 67-4-411 \$15.00
2. State privilege tax, T.C.A. § 67-4-505 \$ 5.00
3. County privilege tax, T.C.A. § 67-4-502,
up to \$ 5.00

These taxes are distributed as follows:

1. T.C.A. § 67-4-505 state tax (\$5) is used:
 - a. 5% to county clerk as fees for collecting and paying over the revenue, T.C.A. § 8-21-701(55); and
 - b. 95% used for county school purposes.
2. T.C.A. § 67-4-411 (\$15) tax is used:
 - a. 5% to clerk as commission,
 - b. the remainder is forwarded to the Commission of Revenue

3. The county tax is distributed according to county legislative body resolution.

Fees of County Officers

The county receives money through fees and commissions for services performed by county officials. The register, county clerk, trustee, sheriff, circuit and criminal court clerks, and clerk and master receive fees or commissions for their services. The excess fees are a source of county revenue for purposes other than the maintenance of these offices.

The statutory references for the fees of these offices are as follows:

Clerks of Courts: T.C.A. §§ 8-21-401 through 8-21-407, 10-7-111, 10-7-117, 18-5-106, 22-2-204, 26-5-108, 26-2-106, 29-22-103, 29-22-105, 30-2-306, 30-2-314, 30-2-709, 32-1-112, 34-2-103, 34-7-104, 36-5-111, 36-5-312, 36-5-405, 38-6-103, 40-3-203, 40-3-204, 40-24-101, 40-24-107, 40-25-107, 55-8-152, 55-10-306, 55-12-129, 56-9-123, 67-5-2403, 67-8-406, 67-8-409, 68-3-402.

County Clerks: T.C.A. §§ 8-21-401 through 8-21-408 and 8-21-701 through 8-21-703, 8-16-109, 7-81-108, 55-4-101, 55-4-105, 55-4-221, 55-4-223.

Registers: T.C.A. §§ 8-21-1001, 7-81-108, 47-9-403 through 47-9-407, 47-9-525, 67-4-409(d), 10-7-114, 48-11-309, 61-2-206, 48-51-303.

Sheriffs: T.C.A. §§ 8-21-901 through 8-21-903, 7-81-108, 26-2-106, 36-5-312, 40-9-127, 55-8-152(f), 67-5-2410.

Jailers' Fees: T.C.A. §§ 8-26-105, 41-4-115, 41-4-105.

Trustees: T.C.A. §§ 8-11-110, 54-4-103, 54-9-112, 69-7-139, 69-7-145, 69-6-220, 69-6-835, 69-6-931, 54-12-111, 54-12-424, 54-12-425 and 38-5-119 through 38-5-121.

Accounting for Fees. There are two basic methods of using and accounting for fees received. Under the oldest system, the officer remits to the trustee, on a quarterly basis, fees, commissions, and charges collected in the preceding quarter in excess of the deputies' and assistants' salaries, the necessary office expenses, and the official's salary. T.C.A. § 8-22-104. Under this system the official may retain fees in an amount equal to three times the official's monthly salary and the deputies' and assistants' salaries. The sheriff is no longer under this first system.

In addition, the legislative body may adopt an alternative system for any of the fee officers or all of them, except for the sheriff who is required to be under this second system. T.C.A. § 8-22-104. Under this system, the fee officer pays to the trustee all fees, commissions, and charges collected by the office on a monthly basis. In return, the legislative body appropriates the officer's salary, the salaries of the deputies and assistants, and the authorized office expenses. The sheriff is always under this "alternative" system.

Under both systems, the deputies' and assistants' salaries may be determined by court decree or by letter of agreement. Under the latter method, if the fee official and the county executive agree on the number and salary of deputies and assistants for the office (and this is within the budget amount), a letter of agreement may be signed and entered into the courts' records; no salary suit is necessary. T.C.A. § 8-20-101. The legislative body under the old system does not appropriate funds for the officer's salaries or regular office expenses unless the office fees are inadequate. However, under the alternative system, the legislative body must appropriate funds for the officer's salary, deputies' and assistants' salaries, and other expenses of the office regardless of the office fees. The excess fees become part of the county general fund and may be appropriated for any proper county purpose. For a more detailed discussion of the fee and salary systems, see Chapter 3.

CHAPTER 7

FINANCIAL STRUCTURE OF COUNTY GOVERNMENT

Financial structure on the county level is generally organized around each local official and the revenues and expenses of each of these offices, which operate separately within the framework of the county financial structure as a whole. The trustee acts as the county banker and handles receipts and disbursements, the latter of which must be authorized by the county legislative body according to statutes enacted by the General Assembly and decisions rendered by the state courts. Accordingly, no county funds may be expended unless authorized (or “appropriated”) by the county legislative body. T.C.A. § 5-9-401. This appropriation procedure is a phase of the annual budgeting process which begins in January and usually ends in July with the approval of the budget.

County financial functions involve current operations as well as capital project financing and debt retirement. (The latter two topics will be treated separately in Chapter 8.) The day-to-day expenses relating to personnel, supplies, materials, utilities, contracted services, upkeep of facilities, and similar costs of providing county services are referred to as current operating expenses. To pay for these expenses the county collects fees authorized by statute, levies and collects taxes, and receives revenues from the state and federal governments. Like a business, the county has income (referred to as revenues) and expenses. Also like a business, the county's financial management involves budgeting, accounting, purchasing, payroll, cash flow, and related areas. Unlike a business, a county has very limited implied powers. It must operate strictly by the express provisions of the law in carrying out these functions. There are three types of state laws applicable to the county financial function: (1) general laws, (2) general laws with local option application, and (3) private acts for a specific county.

Financial Management Under the General Law

Unless a county has elected to operate under a general law with local option application or has adopted a private act passed by the General Assembly (or is operating under a county charter or metropolitan government charter), the county must manage its finances in accordance with the general laws for all counties. General laws provide guidance in the areas of budgeting, accounting, purchasing, and investment of temporarily idle county cash funds.

Budgeting. Under general laws each operating department is required to prepare and submit a budget to the county executive on or before April 1 of each year, or on another date specified by the county legislative body. T.C.A. § 5-9-402. This budget should provide the county legislative body with an estimate of the funds required by the department during the coming fiscal year. T.C.A. § 5-9-402. Also, the county legislative body may appropriate general funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organization having federal tax exempt status under Section 501 (c)(4) of the Internal Revenue Code, and chambers of commerce qualifying under Section 501 (c)(6) of the Internal Revenue Code. A nonprofit organization requesting assistance must submit financial reports to the county clerk and these are available for public inspection. The county legislative body is mandated to provide guidelines for the expenditure of these funds. Notice must be made in a newspaper of general circulation in the county of the intent to make an

appropriation to a nonprofit but not charitable organization before the appropriation is made. T.C.A. § 5-9-109.

The county legislative body will review the submitted departmental budgets and requests for assistance, combine them into one county budget, and approve a budget for the fiscal year which begins July 1 and ends June 30. The law specifies that the proposed annual operating budget must be published in a newspaper of general circulation within one day after presentation. However, the budget cannot be adopted until at least ten days after publication. The annual operating budget must contain a budgetary comparison for the following four governmental funds: general, highway/public works, general purpose school fund, and debt service. T.C.A. § 5-8-507. The state Comptroller of the Treasury prescribes the required form of the county budget. T.C.A. § 5-9-403.

The county budget, as approved by the county legislative body, is the guide for determining the appropriation of all county operating funds for county departments, offices, and agencies. T.C.A. § 5-9-401. The budget format has major categories for each department or service, with line items for salaries, supplies, and other expenses under each major category. This format is commonly referred to as a “line item” budget. In this budget the county may appropriate funds for specific purposes as prescribed by state law. See T.C.A. §§ 5-9-101 through 5-9-112 (and other code sections specifying other purposes). Also, the county legislative body is generally considered to have the authority to amend, reduce, or add to the budget submitted by county operating departments, except for the education department budget which must be approved or rejected as a whole. The county legislative body may not make transfers between the major funds, such as school, highway, general, and debt service, but it may make budget amendments within funds during the course of the fiscal year. T.C.A. § 5-9-407. In some counties, approval of line item amendment requests by department heads is made by the budget committee under authority granted in the annual budget resolution. Nevertheless, all amendments to the county education budget must first be approved by the board of education and then by the county legislative body. T.C.A. § 5-9-407.

A county may receive charitable contributions for the general fund. If funds are given subject to certain conditions as to their use, the county legislative body must approve acceptance of the gift and it must be used for such purposes. If funds are restricted, the money is placed in the county general fund and appropriated according to normal budgetary process. If the gift is of personal or real property which is subsequently sold by the county, the revenue from such sale must be deposited in the general fund. T.C.A. § 5-8-101. Donations for roads or schools are discussed in Chapters 11 and 12 respectively.

Accounting. The state Comptroller of the Treasury, with the approval of the governor, is required to devise a modern and effective bookkeeping and accounting system to be used by all county officials and agencies handling the revenues of the state or its political subdivisions, and is to prescribe the minimum standards required under that system. T.C.A. § 5-8-501. Each county and agency of the county is required to meet these standards; if it fails to do so, the county is obligated to pay the actual cost of auditing above the standard fee prescribed in T.C.A. § 9-3-210. T.C.A. §§ 5-8-502, 5-8-503. Each department must file an annual financial report for the fiscal year ending June 30 with the county executive and the county clerk, who provides copies to members of the county legislative body. T.C.A. § 5-8-505. There is no longer a publication requirement for these financial reports.

There are also some specific statutorily required accounting procedures for certain county offices and departments. Accounting procedures for the county executive are found in T.C.A. § 5-6-108; for the county education department, see T.C.A. §§ 49-2-203 and 49-2-301; and for the county highway department, see T.C.A. § 54-7-113.

Purchasing. The laws regarding purchasing for county governments are not uniform. There are many state laws of general application, as well as several local option laws discussed later in this chapter, which may apply. For example, the county department of education has its own purchasing laws which appear in Title 49 of the *Tennessee Code Annotated*, but these laws are superseded or modified in those counties that have adopted the optional County Financial Management System of 1981, T.C.A. § 5-21-106 *et seq.* Further, in counties that have adopted the County Purchasing Law of 1957, another optional general law, the county board of education may or may not use the central county purchasing system depending upon the approval of the state commissioner of education. T.C.A. § 5-14-115.

The County Uniform Highway Law, at T.C.A. § 54-7-113, provides a purchasing law for the county highway department when purchasing for the department is not governed by private act or when the county has not adopted either the County Purchasing Law of 1957 or the County Financial Management System of 1981. Nevertheless, even where private acts generally govern the purchases of the county highway department, purchases of less than \$5,000 are not required to be publicly advertised and competitively bid. The purchasing provisions of the County Uniform Highway Law do not apply to Shelby, Davidson, Knox, and Hamilton counties.

Purchases from the general fund are governed by the County Purchasing Law of 1983, T.C.A. § 5-14-201 *et seq.*, unless the county operates under a county or metropolitan government charter, or has adopted the County Financial Management System of 1981 or the County Purchasing Law of 1957. Also, this general law does not apply to counties with private acts if the private act provides for public advertising and competitive bidding for purchases over \$5,000 or a lesser amount.

The County Purchasing Law of 1957, found in T.C.A. §§ 5-14-101 through 5-14-116, may be adopted by the voters in a referendum or by a two-thirds (2/3) vote of the county legislative body. This act is one of the three companion Fiscal Control Acts of 1957 discussed later in this chapter.

The County Financial Management System of 1981, also discussed later in this chapter, is found in T.C.A. §§ 5-21-101 through 5-21-129. This system also must be approved by a two-thirds (2/3) vote of the county legislative body or a majority of the voters in order to be effective in any county. T.C.A. § 5-21-126. This law provides for a consolidated financial management system to administer the finances of all county funds that are handled through the office of the trustee, including purchasing procedures. Unlike the 1957 laws, school funds are managed under this system just like all other county funds, unless the Commissioner of Education removes the school department from the system. T.C.A. § 5-21-124.

The County Purchasing Law of 1983, T.C.A. § 5-14-201 *et seq.*, applies to purchases by authorized officials using county funds, except that it does not apply to purchases from county highway funds, county education funds, or purchases by counties that have adopted the County Purchasing Law of 1957 or the County Financial Management System of 1981. Neither does this

act apply in counties operating under a county or metropolitan government charter. Furthermore, the act does not apply to counties with private acts if the private act provides for public advertising and competitive bidding for purchases in excess of \$5,000 or a lesser amount as established by the private act.

Tennessee Code Annotated § 5-14-204 requires that all purchases and leases or lease-purchase agreements made under the County Purchasing Law of 1983 be made or entered into only after public advertisement and competitive bidding, except for (1) purchases costing less than \$5,000, (2) goods or services which may not be procured by competitive means because of the existence of a single source or because of a proprietary product, (3) supplies, materials or equipment needed in an emergency situation, subject to reporting requirements of the county legislative body and the county executive, (4) leases or lease-purchase agreements requiring payments of less than \$5,000 per year, and (5) fuel and fuel products purchased in the open market by governmental bodies. County legislative bodies may by resolution lower the dollar amount over which competitive bids are required, and may also adopt regulations providing procedures for implementing this act.

Counties with populations over 150,000 are authorized to make purchases under \$10,000 without competitive bids or proposals, but these counties may retain their present competitive bidding requirements or establish different limits by private act or charter provision. T.C.A. § 12-3-1007.

County governments may use pricing discounts obtained by the National Association of Counties (NACo) Purchasing Alliance by considering the NACo price in the same manner as a formal bid or informal quotation under the county's bidding laws. T.C.A. § 12-3-1008. The Tennessee Department of General Services (TDGS) may upon request, purchase supplies and equipment for any county. Counties, without public advertisement and competitive bidding, may purchase under the provisions of contracts or price agreements entered into by TDGS. Also, county governments may purchase goods, except motor vehicles, under federal General Services Administration (GSA) contracts, to the extent permitted by federal law or regulations. T.C.A. § 12-3-1001.

County governments may distribute solicitations and receive bids, proposals and other offers electronically, but cannot require small or minority owned businesses to receive or respond electronically. T.C.A. § 12-3-704. Counties, municipalities, utility districts and other local governments may participate in cooperative purchasing agreements for procurement of supplies, services or construction. T.C.A. § 12-3-1009.

The procurement of professional services, such as architectural and engineering services and financial advisory services, is governed by T.C.A. § 12-4-106. There are many other statutes which are not discussed here, but which may affect the manner in which purchases of particular goods and services are to be made. These statutes are scattered throughout the *Tennessee Code Annotated*, depending upon the subject area. There are, for example, several statutes dealing with bidding in connection with construction contracts which appear in Title 62 of the *Tennessee Code Annotated*. Purchasing matters should be carefully reviewed and county attorneys should be consulted with regard to compliance with the requirements of all applicable statutes.

Investment of County Funds. Under general state law a county is directed to invest all idle county funds. T.C.A. § 5-8-301. The county legislative body selects investments from the list of approved options and has authority to appoint an investment committee to carry out the county's investment program. T.C.A. § 5-8-302. The legislative body may appoint the county trustee to the investment committee and may designate the trustee as the official who oversees the investments. Alternatively, the legislative body may delegate the authority to choose an investor to the investment committee. Op. Tenn. Att'y Gen. 94-065 (May 4, 1994). In a county which has adopted the County Financial Management System of 1981, the investment committee would still set policies and procedures for investing idle funds, but the director of finance would have the authority to make the investments within the guidelines set by the law and the committee's policies. T.C.A. §§ 5-21-105(e), 5-21-107(a).

There are three categories of idle county funds which may be invested: (1) funds derived from bond proceeds, (2) funds from the sale of assets, settlements, or other infrequent occurrences, and (3) other idle county funds. All three categories may be invested in any of the following:

1. Bonds, notes, or treasury bills of the U.S. as well as other obligations guaranteed by the U.S. or its agencies;
2. Certificates of deposit and other evidences of deposit of state and federally chartered banks and savings and loan associations, provided that these investments are properly secured;
3. Obligations of the U. S. or its agencies under a repurchase agreement, *if and only if* made according to state funding board procedures *and* approved by the director of local finance;
4. The state investment pool;
5. State bonds, if they have a rating of A or higher;
6. Nonconvertible debt securities of the following issuers provided such securities are rated in the highest category by at least two nationally recognized rating services:
 - (A) The federal home loan bank;
 - (B) The federal national mortgage association;
 - (C) The federal farm credit bank;
 - (D) The student loan marketing association; and
7. The county's own bonds or notes issued in accordance with title 9, chapter 21.

Additionally, counties with a population of 20,000 to 150,000 may invest idle funds in prime commercial paper if it is rated in the highest category by at least two commercial paper rating services and the paper has a remaining maturity of ninety days or less. T.C.A. § 5-8-301.

There are other restrictions on the investment of specified county funds, as well as requirements for protection of county funds through proper collateralization of the investment. T.C.A. § 5-8-301. The advice of the director of local finance, CTAS county government consultant, or county attorney will be helpful in determining available investment options, the correct procedures for making such investments, and the proper collateral to protect county investments.

Financial Management Under General Laws With Local Option Application

As the financial structure of counties grew more complex and cash flow increased, many counties considered the general laws vague and incomplete. Furthermore, the management of county finances under the general law is a fragmented system in which each department makes purchases without issuing purchase orders and maintains separate accounting records. Under this system it is difficult to manage the cash flow for investing funds and to properly determine the county financial condition. To compensate for these deficiencies the General Assembly passed the Fiscal Control Acts in 1957, the County Financial Management System in 1981, and the Local Option Budgeting Law in 1993. Although these are general laws, they only apply to counties in which they have been approved by a two-thirds vote of the county legislative body. (A table listing the budgeting act under which each county operates is included in the Appendix to this manual.)

The primary reasons for these acts were to: (1) better utilize business management techniques, (2) consolidate and establish a uniform financial system, (3) improve utilization of county resources, (4) provide for the employment of a trained technician in finance, and (5) improve county financial information.

Local Option Budgeting Law of 1993. This act, codified at T.C.A. §§ 5-12-201 through 5-12-217, provides an optional budgeting procedure for all county departments which are funded from county appropriations. It may be adopted by a two-thirds vote of the county legislative body.

The primary thrust of this legislation is to provide a system through which a county may develop a consolidated budget for all county appropriations, adopt a tax rate and appropriation resolution to fund that budget, and specify a deadline by which these actions must be taken. In brief outline, this procedure begins no later than February 1 of each year when the county executive distributes to each department budget forms upon which to submit a proposed budget. T.C.A. § 5-12-206. Additionally, the county executive furnishes estimated revenue information to the departments of education and highways, based upon the assessor's estimation of property valuation. T.C.A. § 5-12-207. Along with their proposed budgets, those two departments then submit a form tax rate resolution showing how much property tax they are requesting to fund their budgets. The proposed budgets are then consolidated and submitted to the county legislative body on or before June 1. The statute specifies procedures for resolving disputes, T.C.A. § 5-12-209, and for amending the budget. T.C.A. §§ 5-12-209, 5-12-212, 5-12-213.

This act can work in conjunction with either of the other two local option budget laws (discussed below) or with private acts. The only portion of this budgeting plan that cannot be superseded by other general law or private act adopted by the county is found in T.C.A. § 5-12-210. This section requires that the county legislative body adopt a budget, tax rate, and appropriation resolution no later than July 31 for that fiscal year beginning on the first day of July. The county legislative body can adopt the budget as proposed by the department heads or as consolidated by the county executive or budget committee. If the budget is not adopted before the beginning of the fiscal year on July 1, then the county operates on a monthly allotment, based upon the preceding year's budget, during the month of July. If the budget still is not adopted by August 15, then the portion of the budget proposed by the department of education, together with any modifications agreed upon by the board of education, will become effective by operation of law. T.C.A. § 5-12-210. This provision also includes the property tax rate and appropriation which the education department has proposed to fund its budget. The operating budget for the remainder

of county departments, excluding education, is the consolidated budget, including proposed amendments, which was submitted by the county executive or the budget committee. This budget, together with the proposed tax rate and appropriation measures required to fund it, also becomes effective by operation of law. Finally, the act requires a balanced budget and contains provisions for adjustments if unanticipated circumstances are likely to result in a budget surplus or deficit. T.C.A. §§ 5-12-215 through 5-12-217. Procedures for amending a budget in effect are described in T.C.A. §§ 5-12-212, -213.

The County Financial Management System of 1981. This act is found in T.C.A. §§ 5-21-101 through 5-21-129 and provides for the consolidation of financial functions and the establishment of a financial management system for all county funds handled by the county trustee. (Fee and commission accounts of fee offices are not handled by the county trustee and, therefore, not included under the act.) The system is similar to that found in the 1957 acts; however, under this plan the county operates under one act rather than three. This system must be approved by a two-thirds vote of the county legislative body or a majority of the voters in order to be effective in any county. T.C.A. § 5-21-126.

Under the County Financial Management System of 1981, a finance department is created to administer the finances of the county for all funds handled by the trustee, in conformity with generally accepted principles of governmental accounting and rules and regulations established by the state Comptroller of the Treasury, state Commissioner of Education, and state law. T.C.A. § 5-21-103. Unlike the 1957 laws, this program includes the management of school funds just like all other county funds, although the Commissioner of Education may remove the school department if records are not properly maintained in a timely manner. T.C.A. § 5-21-124.

This system requires a county financial management committee consisting of the county executive, supervisor of highways, superintendent of education, and four members elected by the county legislative body. These latter four need not be members of the board of county commissioners, but may be. T.C.A. § 5-21-104(b). The committee establishes policies, procedures, and regulations to implement a sound, efficient county financial system. T.C.A. § 5-21-104(e). Additionally the county legislative body, by resolution, may create special committees or may authorize the financial management committee to assume any or all of the following functions: (1) budgeting, (2) investment, and (3) purchasing. T.C.A. § 5-21-105.

The county financial management committee appoints a director of finance. Minimum requirements for this position include a bachelor of science degree, with at least 18 quarter hours in accounting, although the committee may select a person with two years of acceptable experience in a related position. T.C.A. § 5-21-106. The compensation of the director is established by the committee subject to the approval of the county legislative body. T.C.A. § 5-21-106(c). The director oversees the operation of the department of finance and installs and maintains a purchasing, payroll, budgeting, accounting, and cash management system for the county. T.C.A. § 5-21-107. The director must have a blanket bond of at least \$50,000 for the faithful performance of the director's duties. T.C.A. § 5-21-109.

The department of finance, under the supervision of the director and subject to the policies and regulations of the county financial management committee, is responsible for the following areas:

1. Budgeting: T.C.A. §§ 5-21-110 through 5-21-114;
2. Accounting Fiscal Procedures: T.C.A. §§ 5-21-115 through 5-21-116;
3. Payroll Account: T.C.A. § 5-21-117;
4. Purchasing: T.C.A. §§ 5-21-118 through 5-21-120;
5. Conflict of Interest - Improper Gifts: T.C.A. § 5-21-121; and
6. Compensation of Committee Members: T.C.A. § 5-21-122.

This system is to be installed within thirteen months, beginning on July 1 of the fiscal year after its adoption and completing the process by August 1 of the second fiscal year. T.C.A. § 5-21-127.

The Fiscal Control Acts of 1957. The Fiscal Control Acts of 1957, found in T.C.A. §§ 5-12-101 through 5-14-116, were intended to provide a means for counties to consolidate functions, establish uniform financial procedures, and incorporate business practices into the management of county finances. They are divided into three separate acts: budgeting, accounting, and purchasing. A county may enact any or all of the three acts; however, it is difficult to implement less than all three acts because each refers to certain provisions of the others. These acts, either individually or together, are adopted by a two-thirds vote of the county legislative body or by a majority public vote in a referendum.

If these acts are adopted, all funds managed by the county executive and the highway supervisor are automatically covered by them. School funds may be placed under the management of these acts only if the state Commissioner of Education approves the transfer. T.C.A. § 5-13-110.

The County Budgeting Law of 1957 found in T.C.A. §§ 5-12-101 through 5-12-114, if adopted by a county, provides for a budget committee made up of five members who include the county executive as well as four other members appointed by the county executive and confirmed by the county legislative body. The four appointed members may be members of the county legislative body but are not required to be. The county executive serves as chairperson of this committee. T.C.A. § 5-12-104. The budget committee performs all duties prescribed by law for the budgeting process, including preparation and control. T.C.A. §§ 5-12-104, 5-12-106, and 5-12-107. Each year while the budget is under consideration, a synopsis of the proposed budget and property tax rate are to be published in a newspaper of general circulation. T.C.A. § 5-12-108. Then the director of accounts and budgets (appointed under T.C.A. § 5-13-103 of the County Fiscal Procedure Law, discussed below) prepares a monthly report showing the condition of the budget, submitting this report to the county executive and the county legislative body. T.C.A. § 5-12-111.

The County Fiscal Procedure Law of 1957, found in T.C.A. §§ 5-13-101 through 5-13-111, pertains to the accounting of county funds. If this act is adopted by a county, the county executive, subject to approval by the county legislative body, appoints a director of accounts and budgets (DAB). T.C.A. § 5-13-103(a). The DAB must be qualified by training and experience in the field of accounting to perform the duties of the office. The salary of the DAB cannot be in excess of those salaries allowed county officials in accordance with T.C.A. §§ 8-24-101 and 8-24-102. T.C.A. § 5-13-103(d). The duties and responsibilities of the DAB are established by the county executive (T.C.A. § 5-13-103(e)) and delineated in T.C.A. § 5-13-105. The corporate surety bond for the DAB cannot be less than \$10,000 nor more than \$25,000. T.C.A. § 5-13-103(c).

The DAB administers a centralized system of accounting and fiscal procedure for the county. T.C.A. § 5-13-104. The DAB also has the duty to verify all claims against the county and to prepare and sign disbursement warrants only after a careful pre-audit of all invoices and verification by the department head receiving the merchandise. T.C.A. §§ 5-13-105, 5-13-107. At the end of each month the DAB prepares a comprehensive report of all revenues and expenditures of the county and presents it to the county legislative body. T.C.A. § 5-13-105(f).

The County Purchasing Law of 1957, found in T.C.A. §§ 5-14-101 through 5-14-116, if adopted, establishes procedures for county purchasing. Under this act the county executive appoints a purchasing agent, subject to the approval of the county legislative body. The purchasing agent must be qualified by training and experience to perform the required duties. T.C.A. § 5-14-103. The person appointed as purchasing agent must have a corporate surety bond of not less than \$10,000 nor more than \$25,000. The salary is not to be in excess of amounts paid to other county officials as prescribed in T.C.A. §§ 8-24-101 and 8-24-102. T.C.A. § 5-14-103(d). The director of accounts and budgets may also serve as the purchasing agent. The primary duties of the purchasing agent are to (1) purchase all supplies, materials, equipment, and contractual services, (2) arrange for rental of all machinery, buildings, and equipment, (3) transfer materials, supplies, and equipment between county departments, and (4) supervise the central storeroom. T.C.A. §§ 5-14-105, 5-14-107, 5-14-108.

A county purchasing commission is also established, consisting of the following five members: the county executive and four other members appointed by the county executive and approved by the county legislative body. T.C.A. § 5-14-106(b). The primary duties of the commission are to establish policies and regulations for making purchases and contracts. T.C.A. § 5-14-106(d).

Competitive bids are required for the following transactions: all purchases of and contracts for supplies, materials, equipment, and contractual services; all contracts for the lease or rental of equipment; and all sales of county-owned property which is surplus, obsolete, or unusable. Certain contracts and purchased items are exempt from this requirement, such as professional service contracts and purchases of fuel and perishable commodities. T.C.A. § 5-14-108.

Except for emergencies, purchases and contracts are not awarded unless first certified by the director of accounts and budgets or other county official or employee in charge of the central accounting records. This certification insures that the unencumbered balance in the appropriation is sufficient to cover the expense. T.C.A. § 5-14-109. Each purchase order or contract issued or executed must be evidenced by a written order signed by the purchasing agent. T.C.A. § 5-14-111. The county is liable for the payment of all purchases made in accordance with the provisions of this act. T.C.A. § 5-14-113.

Neither the purchasing agent, members of the purchasing commission, county legislative body, nor other officials of the county may be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order. T.C.A. § 5-14-114.

Financial Management Under Private Acts

Many counties have adopted private acts passed by the General Assembly which provide procedures for budgeting and purchasing. These acts apply only to the county seeking the private act, and many of these acts have not been revised or updated for a number of years. Private acts of this nature should be written so that they will not conflict with the general law. If the private act is in conflict with a general law, the courts will generally hold it unconstitutional, or the state attorney general will issue an opinion that the private act is unconstitutional or constitutionally suspect.

Financial Management of Fee Offices

As discussed earlier in Chapter 3, the fee offices -- clerks of court, county clerk, register of deeds, and trustee -- may operate on the fee system (under which office expenses are paid out of fees received) or the salary system (under which office expenses are paid from the county general fund and fees are turned over monthly). Those under the salary system are included in the county budget and operate under the procedures described above. However, the financial operation of fee offices under the fee system is similar to financial procedures commonly used by a business. Each office establishes a checking account, receives payments, makes deposits, and issues checks and receipts. The accounting system is similar to that of a business using a double-entry, general ledger system. All fees and commissions must be accurately accounted for to comply with the duties of the office. Each officer must consult the statutes codified in the *Tennessee Code Annotated* for the prescribed duties of the office and follow the accounting standards as prescribed by the state Comptroller of the Treasury. T.C.A. §§ 8-11-104, 9-2-102 through 9-2-105. Most of the duties of each office are recorded in Volume 3 of the *Tennessee Code Annotated*, and it is recommended that each office holder obtain a copy of this volume or at least a copy of the section pertaining to the office.

Auditing

In Tennessee, the records of all local governments must be audited on an annual basis. T.C.A. § 9-3-211. The state Comptroller of the Treasury through the division of county audit is given the authority to establish accounting standards (T.C.A. §§ 5-8-501, 9-3-212(b)) and auditing standards. T.C.A. § 9-3-212(b). The county legislative body contracts with a certified public accountant or the state division of county audit to make the annual audit. T.C.A. § 9-3-212. However, the county must receive approval of a private auditor from the division of county audit and comply with other requirements of that office. The contract cost to use the state department of audit is 22½¢ for each person in the county based on the most recent federal census. T.C.A. § 9-3-210. Regardless of who performs the audit, a certified copy of it must be submitted to the office of the State Comptroller. T.C.A. § 9-3-213. In the event state-shared funds are misappropriated or misused, the state is authorized to withhold state funds for the amount misused. Also, the state may collect on the individual official's surety bond if the misused funds result from that official's unlawful or dishonest
a c t s . T . C . A .
§§ 9-3-301, 9-3-302.

CHAPTER 8

COUNTY FINANCING OF CAPITAL PROJECTS AND DEBT RETIREMENT

Capital projects include purchases of land, buildings, and equipment; the construction of buildings, roads, and bridges; the renovation of buildings; and other such improvements which last for many years. Just as in the business world, governmental financing of capital projects involves short-term financing in the form of notes and permanent financing in the form of long-term notes or bonds. In some rare cases, counties levy taxes to fund capital projects. Regardless of the type of financing, the county legislative body must authorize the funding of such projects. Once the method of financing the capital project is approved, the county legislative body must establish a means of paying the principal and interest on the debt created. This process involves the establishment of a debt service fund (sometimes referred to as a debt retirement or sinking fund) and the imposition of a tax or taxes, frequently the property tax or local option sales tax, to retire the debt.

Several steps are involved in initiating a capital project, often beginning with an architect or engineer. When a county decides that a capital project is necessary, the county legislative body may adopt a resolution authorizing funds to contract with an architect, engineer, or consultant service to prepare preliminary plans and cost estimates. According to T.C.A. § 62-2-107, all contracts for construction and maintenance exceeding \$25,000 must be under the supervision of a licensed architect or engineer.

Unless the county has the staff and expertise, the services of a financial advisor or bond fiscal agent are usually needed. T.C.A. § 9-21-110. An agent of this type can be of great assistance to the county in preparing financial statements, legal opinions, and proper resolutions, in advertising the sale of the notes or bonds, in assisting the county in the timing of the issue, and in seeking bids for issuance. Financial advisors, bond placement agents and underwriters are required to file with the county an estimate of the cost of any debt issuance, including financial advisory fees and related fees and costs before the placement agent or underwriter enters into a bond purchase agreement or bond placement agreement with the county. Chapter 879 of the Public Acts of 1998. If the county authorizes funding of bonds or notes without the assistance of a financial advisor, the county should call upon the director of local finance in the state comptroller's office and/or the CTAS county government consultant to provide assistance with the necessary resolutions to authorize the funding. The CTAS staff may help the county in the planning stage to determine the projected cost of a debt retirement plan and/or projected funding sources to retire the debt.

There are many statutes authorizing both long-term notes and bonds, as well as short-term financing notes. Counties must review their financing requirements to determine which type of bonds or notes would be best for the capital project being considered. In this chapter we will attempt to summarize the different types of bonds and notes and to give an overview of their uses. However, before considering any bond or note issue, counties are urged to seek the assistance of a financial advisor, the director of local finance in the state comptroller's office, and/or the CTAS county government consultant for the area.

Limit on Amount of Outstanding Debt

Since nearly all services rendered by the county are required by the state and require sizeable investments in capital improvements, counties are *not* limited as to the amount of indebtedness. T.C.A. § 9-21-103. However, when a county's debt ratio of outstanding debt to property values exceeds the state average or a national standard recognized by firms who trade municipal bonds, the county will pay a higher interest rate or be unable to issue additional bonds. When a county faces this problem, the county's financial advisor can offer alternatives to fund proposed projects.

Types of Funding

Bonds Issued Under the Local Government Public Obligations Act of 1986. This act is codified in T.C.A. §§ 9-21-101 through 9-21-1017. Its purpose was to consolidate statutes pertaining to debt obligations of the county and to provide a “uniform and comprehensive statutory framework authorizing any local government to issue” long-term debt to fund costly capital improvement projects.

Authorized purposes for issuing notes and bonds are listed under T.C.A. § 9-21-105(20). Also, any local government may issue general obligation bonds under this Act for certain unfunded pension obligations if approved by state funding board after receiving a recommendation by the state director of local finance. T.C.A. § 9-21-127. The powers of local governments are described in T.C.A. § 9-21-107. All interest income received by investors buying notes or bonds issued under this act is generally exempt from federal income taxes, and by statute, exempt from all state, county, and municipal taxation except inheritance, transfer, and estate taxes. T.C.A. § 9-21-117. However, there are federal restrictions regarding earnings from borrowed funds, so it is important for counties to consult with a financial advisor regarding these arbitrage regulations.

All notes issued under this act must first be authorized by resolution adopted by the county legislative body and then approved by the state Director of Local Finance, a division of the state Comptroller of the Treasury. Before the state Director of Local Finance will approve notes, the county must adopt a balanced budget which must also be approved by this same director. T.C.A. § 9-21-403, 9-21-404.

The different bonds and/or notes that can be issued under the Local Government Public Obligation Law are as follows:

1. *General Obligation Bonds.* T.C.A. §§ 9-21-201 through 9-21-216. Upon the issuance of a general obligation (GO) bond, the county pledges the full faith, credit, and unlimited taxing power of the county as to all taxable property in the county or a designated portion of the county. T.C.A. § 9-21-201. These bonds may be issued with a maturity of up to forty years; however, investors usually prefer fifteen to twenty years. T.C.A. § 9-21-213(a). Counties are generally mandated to provide various services and are given the power to provide funding for these services, with certain restrictions. Under this act, registered voters may petition the county for an election on the issuance of the proposed bonds. T.C.A. § 9-21-207. Also, the county legislative body may hold a voluntary election. T.C.A. § 9-21-208.

2. *Revenue Bonds.* T.C.A. §§ 9-21-301 through 9-21-316. When revenue bonds are issued, the income or revenues from the project are pledged to secure the debt. Usually, these bonds are issued for water and sewer projects or similar revenue-producing services.
3. *Refunding Bonds -- General Obligation and Revenue.* T.C.A. §§ 9-21-901 through 9-21-1017. When general obligation or revenue bonds are issued at high interest rates, they will have a callable feature allowing the county to recall the unpaid bonds or notes. In order to have funds to recall these bonds or notes, the county may issue refunding bonds. These bonds use the same pledge for security and replace the original issue with a lower rate of interest. By issuing the refunding bond issue at a lower rate of interest, the county will save by paying less interest over the remaining term of the issue.
4. *Bond Anticipation Notes.* T.C.A. §§ 9-21-501 through 9-21-505. Another method used to avoid paying high interest rates is to issue bond anticipation notes for up to six years in two year intervals. Using these notes allows the county time to wait for better interest rates and/or marketing conditions.
5. *Capital Outlay Notes.* T.C.A. §§ 9-21-601 through 9-21-611. Capital outlay notes are used by local governments to fund many types of capital improvement projects. The notes may be issued initially for a period of up to three years and then renewed for two more three year periods, for a total of nine years; at least one-ninth of the original principal amount of these notes must be retired each year, unless this requirement is waived by the state Director of Local Finance. T.C.A. § 9-21-604. Notes may also be issued for more than three but not greater than twelve years. T.C.A. § 9-21-608. Issues of twelve-year notes less than two million dollars may be sold at competitive sale or through the informal bid process described in the statute; notes totaling more than two million must be sold by competitive sale. T.C.A. § 9-21-608. A major advantage of issuing capital outlay notes is that the service of a fiscal advisor may not be needed.
6. *Grant Anticipation Notes.* T.C.A. §§ 9-21-701 through 9-21-705. Whenever the county receives a grant from the federal or state government, the county can issue grant anticipation notes of up to three years, or for longer specified periods with the approval of the state director of local finance. T.C.A. § 9-21-705.
7. *Tax (Revenue) Anticipation Notes.* T.C.A. §§ 9-21-801 through 9-21-803. Whenever the cash flow is not sufficient to meet current expenses, which usually occurs as a result of inadequate accumulated fund balances, the county may issue revenue anticipation notes, subject to the approval of the state Director of Local Finance. *An important point: these notes must be paid off by June 30th of the fiscal year in which they are issued.* This requirement insures against the approval of a deficit budget.

School Bonds. While bonds for school capital purposes can be issued under the Local Government Public Obligations Act, many school bonds are issued under the authority of the school laws. T.C.A. §§ 49-3-1001 through 49-3-1110. These bonds can be issued for almost any school capital project:

to purchase property, to erect or repair school buildings, to furnish and equip school buildings, and to refund, call, or make payments of principal and interest on previously issued bonds, as well as to contribute or make grants to state education facilities within the county or in neighboring counties. T.C.A. § 49-3-1004. They may also be issued for the purchase of buses. T.C.A. § 49-3-1006.

These bonds are general obligation bonds, backed by the full faith and credit of the county and by its taxing authority. T.C.A. § 49-3-1005. Only one resolution of the county legislative body is necessary to authorize the issuance of this type of bond. T.C.A. § 49-3-1002. School bonds are not subject to a referendum upon petition, as are general obligation bonds under the Local Government Public Obligation Act; however, the county legislative body has the authority to call for a referendum by resolution to ascertain the will of the people regarding the issue. T.C.A. § 49-2-101(5). But, since the county is required to provide public education according to state laws and regulations and is frequently under a mandate to correct deficiencies, such a referendum may serve no real purpose.

School bonds may be issued for a period of up to forty years; however, market conditions usually dictate that the bonds mature in fifteen to twenty years.

The law requires counties containing city schools or special school districts to distribute the proceeds from a bond issue for school capital purposes on an average daily attendance basis, unless a tax district outside of the city or special school district is established. T.C.A. §§ 49-3-1003, 49-3-1005.

If a tax district is not established, city systems and special school districts are entitled to a proportional share of the proceeds of a school bond issue, or they may waive their rights to such a share. T.C.A. §§ 49-3-1003, 49-3-1005. If school bonds are payable only from funds collected outside the city or special district, then the city or special school districts do not share in the proceeds. T.C.A. § 49-3-1005(b)(2). The same sharing rules now apply to capital outlay notes and bonds issued for school capital purposes under the Local Government Public Obligations Law. However, the disposition of proceeds of any capital outlay notes issued prior to January 15, 1998 without sharing is valid unless the disposition was challenged in court before January 15, 1998. Chapter 903 of the Public Acts of 1998.

Tennessee Local Development Authority Loans. The Tennessee Local Development Authority (T.C.A. § 4-31-101 *et seq.*) -- made up of the Governor, Secretary of State, state Treasurer, Comptroller of the Treasury, and Commissioner of Finance and Administration -- has statutory authority to borrow money in the name of the state and on the credit of the state, allowing it to lend funds to local governments for the following purposes:

1. Correctional Facilities. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
2. Construction of Sewage Treatment Works. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
3. Waterworks. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
4. Energy Recovery Facilities. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
5. Solid Waste Resource Recovery Facilities. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.

6. Agriculture Development. T.C.A. §§ 4-31-201 through 4-31-206.
7. Industrial Development. T.C.A. §§ 4-31-301 through 4-31-308.
8. Rural Fire Protection Equipment. T.C.A. §§ 4-31-501 through 4-31-516.
9. Airports. T.C.A. §§ 4-31-601 through 4-31-615.
10. Health Facilities. T.C.A. §§ 4-31-201(5), 4-31-401 through 4-31-415, 4-31-701 through 4-31-711.

In order to borrow from the state, a local government is required to pledge its allocation of state-shared taxes to the state for the annual interest and principal payments, in case the county defaults on its obligation to pay.

Economic Development Bonds. There are several statutes which provide for commercial or industrial development within counties through the issuance of county bonds. Counties may use the Local Government Public Obligations Act to issue such bonds. T.C.A. § 9-21-101 *et seq.* However, counties frequently use the authority granted to industrial development corporations or through the Industrial Building Bond Act of 1955.

Industrial Development Corporations. Practically all bonds for economic development at the city and county level are issued under the authority of industrial development corporations. The statutory authority for this type of bond issue is T.C.A. §§ 7-53-101 through 7-53-311. It is important to note that the Federal Tax Reform Act of 1986 limited the use of economic development bonds which exempt interest from federal income taxation. Also, see T.C.A. §§ 9-20-101 through 9-20-106 for the state law on allocation of private activity bonds.

Before an industrial development corporation can be established, the county legislative body, by resolution, authorizes its creation. T.C.A. §§ 7-53-201 through 7-53-204. Then the legislative body appoints at least seven directors to the board. These directors, who may not be officers or employees of the county, are responsible for authorizing all industrial development bonds and notes. T.C.A. § 7-53-301. The county is not liable for the principal or interest on any bonds issued through the corporation; however, the county may pledge its full faith and credit as surety on a bond issue, provided three-fourths of the county's voters approve the pledge. T.C.A. § 7-53-306. The pledge cannot exceed ten percent of the total assessed valuation of the property of the county.

After the corporation is established, a business or industry desiring to move to the county, or expand its facilities there, contacts the industrial development board, usually through an attorney. Normally this contact is made after the business has a commitment from a financial institution to authorize the issuance of notes and/or bonds. Then, with the approval of the financial institution, a trustee is set up to receive the proceeds from the issue and to disburse the funds for the intended purpose. Once the project is completed, the borrower business makes regular payments to the trustee to amortize the principal and interest. The reason for issuing the bonds through a non-profit governmental corporation is that the interest income to the lender is tax exempt. This feature will reduce the cost to the business for interest expense.

The business seeking the loan may borrow the principal through the corporation as a loan or it may lease the property through the corporation. T.C.A. § 7-53-101. If the business borrows the principal through the industrial development corporation, then the property is owned in the name of the business and property taxes are paid by the business as with any other commercial or industrial

taxpayer. If it is a lease arrangement, the ownership of the property may be transferred to the business upon the payment of the outstanding debt. In a lease arrangement through the corporation, the business does not pay real property taxes since the property is owned by the tax exempt industrial development corporation, although the county may receive payments in lieu of property taxes. T.C.A. § 7-53-305.

Industrial development bonds may be issued for almost any industrial or business purpose as long as it complies with the Federal Internal Revenue Regulations and T.C.A. § 7-53-101(11), and with the allocation limitation established by the State Department of Economic and Community Development under federal guidelines for income tax exempt bonds.

Industrial Building Bond Act of 1955. The bonds issued under this act are general obligation bonds of the county for which the full faith and credit and unlimited taxing power of the county are pledged in the event that rental income from the business is not sufficient to retire the debt. T.C.A. § 7-55-111. Before the bonds are issued, however, they must be approved by a three-fourths majority of the county's registered voters. T.C.A. § 7-55-107. The authority for this type of bond issue is found in T.C.A. §§ 7-55-101 through 7-55-116.

Industrial Building Revenue Bond Act. This act, found in T.C.A. §§ 7-37-101 through 7-37-116, allows the county to issue industrial bonds by pledging only the rental income from the business. There is no liability to the county but the voters must approve the issue by a three-fourths majority.

Other Bonds. There are many other statutes which authorize the county to issue bonds. The list below includes many of them:

- Airports. T.C.A. §§ 42-5-101 through 42-5-205.
- Conservation of Natural Resources and Public Recreation. T.C.A. §§ 11-21-101 through 11-21-109.
- Drainage Projects. T.C.A. §§ 69-6-101 through 69-6-1303.
- Electrical Plants. T.C.A. § 7-52-103.
- Fords, Ferries and Bridges. T.C.A. §§ 54-11-101 through 54-11-308.
- Forestry Land. T.C.A. §§ 11-23-101 through 11-23-105.
- Garbage and Disposal Services. T.C.A. § 5-19-111.
- Highways, county. T.C.A. §§ 54-9-101 through 54-9-212.
- Housing Projects. T.C.A. §§ 7-60-101 through 7-60-217; T.C.A. §§ 13-20-501 through 13-20-614.
- Hospitals, Metropolitan Government. T.C.A. §§ 7-57-101 through 7-57-404.
- Levees. T.C.A. §§ 69-5-101 through 69-5-108.
- Libraries. T.C.A. §§ 10-3-101 through 10-3-111.
- Medical Arts Buildings. T.C.A. §§ 68-11-605 through 68-11-615.
- Public Building Authority. T.C.A. §§ 12-10-110 through 12-10-122.
- Recreational Land Facilities. T.C.A. §§ 11-24-103 through 11-24-110.
- Road Improvement Districts. T.C.A. §§ 54-12-101 through 54-12-426.
- Solid Waste Disposal. T.C.A. §§ 68-211-901 through 68-211-925.
- Transportation System (Transit). T.C.A. §§ 7-56-101 through 7-56-109.
- Transportation System (Rail). T.C.A. §§ 7-56-201 through 7-56-213.

- Urban Type Public Facilities (Sewer lines, incinerators, water pipelines, and docks). T.C.A. § 5-16-106.
- Veterans Memorials. T.C.A. §§ 58-4-208 through 58-4-218.
- Voting Machines. T.C.A. § 2-9-111 (State Financing: T.C.A. § 2-9-112).
- Water Supply and Waste Treatment. T.C.A. §§ 68-221-101 through 68-221-1015.
- Watershed Districts and Projects. T.C.A. §§ 69-7-101 through 69-7-149.

Special Financing of County Obligations

Whenever county funds are not properly managed or when economic conditions cause the reduction of revenue sources for the current budget, the county may be forced to issue funding bonds or to seek state emergency loans.

Funding Bonds. Funding bonds are authorized in T.C.A. §§ 9-11-101 through 9-11-119. Whenever a county does not have cash to operate the services authorized by the county or to pay outstanding debts, whether as a result of exceeding the budget authorization or failure of estimated taxes and revenues to materialize, funding bonds may be issued in order to keep the county on a “cash basis.” T.C.A. § 9-11-103. All warrants, notes, other indebtedness, and interest which should have been paid at the end of the fiscal year but were unpaid may be funded with the use of funding bonds. T.C.A. § 9-11-103. In order to issue funding bonds, the county legislative body passes a bond order and publishes it for two consecutive weeks. T.C.A. § 9-11-104, 9-11-105. After the bond order is passed, the county legislative body must then pass the proper resolution authorizing the issuance of the funding bonds. T.C.A. § 9-11-107. Finally, the county must submit a financial statement and application, along with the bond order and resolution, to the state Director of Local Finance for approval. T.C.A. § 9-11-108.

State Emergency Loans. These loans are provided for in T.C.A. §§ 9-13-101 through 9-13-107 and T.C.A. § 9-13-201 *et seq.* A prerequisite for a loan under the first section is a determination by the state Board of Equalization that a county has incurred unanticipated revenue losses resulting from court decrees which have reduced the assessments of railroad or public utility properties. T.C.A. § 9-13-102. The state board is to consider the fiscal condition of the county to determine the necessity for the loan. T.C.A. § 9-13-104. Under T.C.A. § 9-13-201 *et seq.*, the state can provide loans to counties under unusual financial stress. Under this law, all of the county's financial activities are supervised by the state Director of the Division of Local Finance until the emergency loans are repaid.

Economic Adjustment Financing. Authorization for this type of assistance is found in T.C.A. §§ 9-14-101 through 9-14-108. “Local governments are authorized to participate cooperatively with the state and federal governments in activities designed to alleviate or moderate existing or potential conditions of severe economic adjustment, resulting from termination or closure of major industries or firms, . . . and major disasters.” The act describes various methods of funding such projects.

Debt Retirement

To make annual payments on bonds or notes issued by the county or loans received from the state, a debt retirement fund (a separate account with the county trustee) is established to receive taxes and other revenues for paying the annual interest and principal of these obligations. Before a county's

budget is approved by the state Director of Local Finance or before new bonds or notes can be issued, the county must provide for the payment of the outstanding principal and interest on an annual basis. It is very important when planning capital improvements that the annual funding of the debt be projected. It is best to set the tax rate when the bonds or notes are issued so that the people can see the benefits as well as the cost.

Leases for Capital Improvement Projects

In addition to obtaining property through the funding methods discussed above, county governments also have the authority to enter into contracts, leases, or lease-purchase agreements. T.C.A. § 7-51-901 *et seq.* Leases for capital improvement property cannot exceed forty years or the useful life of the project and must be approved by the county governing body. T.C.A. §§ 7-51-902 through 7-51-904. If the term of any lease exceeds five years, public notice of the meeting at which the project will be discussed must be given at least seven days prior to the meeting. T.C.A. 7-51-904.

Summary

Capital improvements are necessary for providing mandated county services. When county officials attempt to delay the construction of schools, jails, and other capital improvements, they add to the problems and increase the cost to all county taxpayers. It is best to realize that capital improvements are just as necessary as the costs of salaries, supplies, and other expenses. Since buildings and equipment must be replaced, the county should have a capital improvements program and financing plan to minimize the impact of such needs and to maintain a high level of service.

CHAPTER 9

COURTS

“The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish.”

TENN. CONST., art. VI, § 1.

The Tennessee Plan

In 1994, the legislature enacted the “Tennessee Plan” which primarily affects the selection of appellate court judges, providing that Supreme Court and intermediate appellate level judges are to be nominated by a Judicial Selection Commission and appointed by the governor. Their performance is then evaluated and reported on by a Judicial Evaluation Commission; voters decide only whether or not the judge should be retained. The judicial evaluation program applies to each appellate judge seeking to serve a complete term after September 1, 1994. The plan applies to trial court vacancies occurring after September 1, 1994, which are to be filled by the governor's appointment of one of the three people nominated by the Judicial Selection Commission. Nominees are to be selected by the process previously applicable only to intermediate appellate level judges, except that the commission is to hold a public meeting to discuss candidates in the judicial district from which the vacancy is to be filled. That term expires on August 31 after the next regular August election occurring more than thirty days after the vacancy, at which time a candidate is elected to fill the remainder of the unexpired term or a complete term, as otherwise provided by law. T.C.A. §§ 17-4-101 and following.

The Tennessee Supreme Court

Organization. The Supreme Court consists of five justices and no more than two shall reside in any one of the grand divisions. The justices must be: (1) thirty-five years old; (2) a Tennessee resident for five years; and (3) licensed to practice law in Tennessee. The justices designate their Chief Justice. The Supreme Court holds court in Knoxville, Nashville and Jackson, but it may be held in other places as the Chief Justice may designate. However, the Supreme Court must hold court at Knoxville on the second Monday in September, at Nashville on the first Monday in December, and at Jackson on the first Monday in April. TENN. CONST. art. VI, §§ 2, 3; T.C.A. §§ 17-1-106(a), 16-2-102, 16-2-103.

Jurisdiction. The Supreme court's jurisdiction “shall be appellate only, under such restrictions and regulations as may from time to time be prescribed by law; but it may possess such other jurisdiction as is now conferred by law on the present Supreme Court.” TENN. CONST. art. VI, § 2. The court lacks original jurisdiction in any matter, and the Legislature lacks authority to confer original jurisdiction upon it. *In re Bowers*, 192 S.W. 919 (Tenn. 1917). Accordingly,

the court may not: (1) try cases *de novo*, *Simm v. Dougherty*, 210 S.W.2d 486 (Tenn. 1948); or (2) render advisory opinions. *Leach v. State*, 491 S.W.2d 81 (Tenn. 1973).

Direct appeals may be taken from the trial court to the Supreme Court only if authorized by statute. However, an appeal by permission may be taken from an appellate court's final decision only upon application and in the court's discretion. Direct appeals may be taken to the Supreme Court in the following cases:

1. Workers' compensation cases. T.C.A. §§ 16-4-108, 50-6-225;
2. Expedited appeals regarding denial of consent for abortion to minors. T.C.A. § 37-10-304(g); and
3. Disciplinary actions involving attorneys. T.C.A. § 23-3-204.

Court of Appeals

Organization. The Court of Appeals is the appellate court for civil cases in Tennessee and consists of twelve judges, of whom not more than four shall reside in one grand division. T.C.A. § 16-4-102. An appellate judge must be: (1) thirty years old; (2) a Tennessee resident for five years; and (3) admitted to practice law in Tennessee. T.C.A. § 16-4-102. This court sits in sections of three judges each, in Knoxville, Nashville and Jackson, and hears and decides cases as if all twelve members were present. T.C.A. § 16-4-113. When sitting in sections of three, the concurrence of two judges is sufficient for a decision, and is treated as if the entire court had participated. T.C.A. § 16-4-109. When sitting en banc (all twelve judges), the concurrence of seven judges is necessary for a decision. When two sections (eight judges) are sitting, concurrence of five judges is necessary for a decision. T.C.A. § 16-4-109. This court sits in sections concurrently in Knoxville, Nashville and Jackson as ordered by the presiding judge for such time as the court deems necessary for the dispatch of its business. T.C.A. § 16-4-112.

Jurisdiction. The court has only appellate jurisdiction and no original jurisdiction. The appellate jurisdiction extends to all civil cases, except those statutorily authorized for direct appeal to the Supreme Court. The court has appellate jurisdiction over civil or criminal contempt arising out of a civil matter. T.C.A. § 16-4-108.

Court of Criminal Appeals

Organization. The General Assembly established the Court of Criminal Appeals in 1967 pursuant to TENN. CONST. art. VI, § 1. Originally, there were seven members, but the membership was increased to nine in 1976. No more than three judges can reside in any grand division. As with the Court of Appeals, these judges must be at least thirty years of age, a five year resident of the state, and licensed to practice law in Tennessee. T.C.A. § 16-5-102. The court may sit en banc or in panels of three, five or seven judges. However, the concurrence of a majority of judges sitting is necessary for a decision. T.C.A. § 16-5-107.

Court must be held at Knoxville on the fourth Monday in June, at Nashville on the third Monday in February, and at Jackson on the second Monday in October. The court may sit at the above-mentioned places without reference to terms, for the purpose of hearing and deciding cases and other matters before it, and for such time as may, in the court's judgment, be necessary for the prompt and orderly dispatch of its business. T.C.A. § 16-5-107.

Jurisdiction. Jurisdiction is appellate only, with the court having no original jurisdiction. T.C.A. § 16-5-108. Jurisdiction extends to review of final judgments of trial courts in the following cases:

- Criminal cases, both felony and misdemeanor;
- Habeas corpus and post-conviction proceedings attacking the validity of a final judgment of conviction or the sentence in a criminal case, and other cases or proceedings instituted with reference to or arising out of a criminal case;
- Civil or criminal contempt proceedings arising out of a criminal matter; and
- Extradition cases. T.C.A. § 16-5-108.

Direct appeals to the Supreme Court in criminal cases extend only to those cases expressed in the statute. However, an appeal by permission may be taken from a final decision of the Court of Criminal Appeals to the Supreme Court on application and in the court's discretion.

Trial Courts

Organization. The state trial courts were divided into thirty-one judicial districts in 1984. T.C.A. § 16-2-506. Circuit and chancery courts exist within each district, and some districts have separate criminal courts. Each judicial district selects a presiding judge who assigns cases to reduce delays, distributes the workload equitably, and promotes the orderly and efficient administration of justice in the district. T.C.A. § 16-2-509. The judges of each district must promulgate uniform rules of practice for that district. T.C.A. § 16-2-511. The administrative director of the courts maintains a list of the local rules. T.C.A. § 16-2-511.

The 1984 redistricting bill abolished the “terms of court.” The minutes of all courts remain open continuously. T.C.A. § 16-2-510. Court is held within each: (1) judicial district at times set by the judges of that district; and (2) county in the district as needed to dispose of the court's business. T.C.A. § 16-2-510.

Circuit and chancery court judges are elected for an eight-year term by the voters of the district or circuit to which they are assigned. TENN. CONST. art. VI, § 4. A judge must be: (1) thirty years old; (2) a Tennessee resident for five years; (3) a resident of the circuit or district for one year, TENN. CONST. art. VI, § 4; (4) licensed to practice law in Tennessee; and (5) eligible under the general standards to hold public office. T.C.A. §§ 17-1-106, 8-18-101.

To facilitate the handling of cases, any judge or chancellor may exercise by interchange, appointment, or designation the jurisdiction of any trial court other than that to which he was elected or appointed. T.C.A. § 16-2-502. Legislation passed in 1997 provided that any judge sitting by interchange has the same immunity as the judge he or she is replacing and that the state or county must provide the same defense, if necessary, for the substituting judge. T.C.A. § 16-1-114.

Court Clerks. The circuit court clerk, acting as the principal administrative aide to the circuit court, provides assistance in the areas of courtroom administration and records management, docket maintenance, revenue management, maintenance of court minutes, official communication and various other court-associated duties. T.C.A., Title 18, Chapters 1, 2 and 4. The clerk is elected for a four-year term. T.C.A. § 18-4-101. There is one circuit court clerk in each county.

Likewise, the clerk and master, acting as the principal administrative aide to the chancery court, provides assistance in the areas of courtroom administration and records management, docket maintenance, revenue management, maintenance of court minutes, official communication and various other court-associated duties. T.C.A., Title 18, Chapters 1, 2 and 5. The clerk is appointed by the chancellor for a six-year term. T.C.A. § 18-5-101.

In most counties, the circuit court clerk performs the duties of the criminal court clerk. However, a separate criminal court clerk's office is located in Davidson, Hamilton, Knox, and Shelby counties.

Jurisdiction of Circuit Court. The General Assembly may establish circuit courts, and may increase or diminish the jurisdiction. TENN. CONST. art. VI, §§ 1, 8. The court has general jurisdiction in all cases where jurisdiction is not conferred on another tribunal. T.C.A. § 16-10-101. The court may hear and determine suits of an equitable nature, if there is no objection, or may transfer such cases to the chancery court. If the circuit court chooses to hear an equity case, it must determine the case upon equity principles, and may exercise equitable powers. T.C.A. § 16-10-111.

The circuit court has exclusive original jurisdiction in the following cases:

- Correction of mistakes in deeds of conveyance of land or registration thereof. T.C.A. § 66-5-107.
- Applications to restore citizenship by persons who have been rendered infamous by judgments of any court in the state. T.C.A. §§ 16-10-104, 40-29-101;
- All matters relating to the seizure and destruction of intoxicating liquor if the circuit court has jurisdiction in a particular county over offenses against the state liquor laws. T.C.A. § 57-9-105;
- Eminent domain cases and *in rem* eminent domain cases brought by the county, state, or United States. T.C.A. §§ 29-16-104, 29-17-601;
- Motions to impose a \$500 forfeiture upon the county trustee for certain breaches of duty, and to impose liability on the trustee and the trustee's surety for breach of duty. T.C.A. § 8-11-106 through 8-11-108;
- Writs of mandamus to enforce the performance of any duty made incumbent by law upon the county. T.C.A. § 5-1-107;
- Suits to condemn land for the failure to pay taxes where personal property does not satisfy the distress warrant and where the sheriff has levied upon the real estate. T.C.A. §§ 67-4-110(c), 67-4-215(c);
- Motions to proceed against any tax collector or other officer of the State who fails to collect taxes, who fails to pay over taxes received by him, or who commits any act of neglect, misprision, misfeasance, or malfeasance in office. T.C.A. §§ 67-1-1602(b), 67-1-1623(a); and
- Petitions by the circuit court clerk, and the sheriff in counties without a separate criminal court, requesting authority to hire deputies or assistants. T.C.A. § 8-20-101.

Unless otherwise provided, the circuit court has appellate jurisdiction of all actions of any nature instituted before any inferior jurisdiction, whether brought by appeal, certiorari, or in any other

manner prescribed by law. T.C.A. § 16-10-112. An appeal may be taken to the circuit court from the judgment of the general sessions court, city judge, recorder or other officer of a municipality. T.C.A. §§ 27-5-101, 27-5-108, 6-21-508. In 1996 Public Chapter 777, the legislature amended Title 4, Chapter 21 to allow the Circuit Court to share jurisdiction with the Chancery Court over human rights actions. In 1997 the legislature also amended T.C.A. § 37-1-159 to give the Circuit Court appellate jurisdiction over unruly child proceedings or dependent and neglect proceedings heard in the juvenile court. In these cases, the Circuit Court shall try the case *de novo*.

Jurisdiction of Chancery Court. The General Assembly determines the chancery court's jurisdiction, and may increase, decrease, or alter its jurisdiction. TENN. CONST. art. VI, § 8. Chancery courts “shall have all the powers, privileges, and jurisdiction properly and rightfully incident to a court of equity.” T.C.A. § 16-11-101. This inherent jurisdiction is original and exclusive in cases of an equitable nature, where the debt or demand exceeds \$50, unless otherwise provided. It lacks jurisdiction in cases where the debt or demand is less than \$50, unless otherwise specifically provided. T.C.A. § 16-11-103. Although this inherent jurisdiction is exclusive, if no objection to jurisdiction is made, a circuit court may hear and determine such suits or may transfer the suit to chancery court. T.C.A. § 16-10-111.

Chancery courts exercise inherent jurisdiction, where the debt or demand exceeds \$50, in the following cases:

- All actions resulting from accidents and mistakes;
- All actions resulting from frauds, actual and constructive;
- All actions resulting from trusts, express, constructive and resulting;
- All actions for the specific performance of contracts;
- All actions for the reformation, re-execution, rescission and surrender of written instruments;
- All actions for an accounting, and for surcharging and falsifying accounts;
- All actions between partners, and to wind up an insolvent partnership;
- All actions for the administration and marshaling of assets;
- All actions for subrogation and substitution;

- All actions for the enforcement of liens created by mortgages, deeds of trust, sales of land on credit, or other equitable consideration;
- All actions against minors in reference to their estates, not cognizable at law;
- All actions by wards against guardians, executors, administrators and others, where an accounting or surcharging or falsifying an account, is necessary;
- All actions for an apportionment and contribution;
- All actions for the marshaling of securities;
- All actions for relief against forfeitures and penalties;
- All actions for the redemption of land or other property;
- All actions to have absolute deeds or bills of sale declared to be mortgages;
- All actions for the construction and enforcement of wills and trusts;
- All actions to obtain a set-off against a judgment in favor of a nonresident or insolvent;
- All actions for the discovery and perpetuation of testimony;
- All actions to compel claimants to interplead;
- All actions for equitable attachments and receivers;

- All actions where a *ne exeat republica* is sought;
- All actions where an injunction is a substantial part of the relief sought;
- All actions to remove clouds and quiet titles;
- All actions for the establishment and execution of charities;
- All actions for a new trial after a judgment at law;
- All actions to have void judgments so declared, and to avoid voidable judgments;
- All actions to execute decrees, and to impeach decrees and judgments;
- All actions to prevent the doing of an illegal or inequitable act to the injury of plaintiff's property rights, or interests, *quia timet*;
- All actions for the exoneration or protection of sureties;
- All other actions where the defendant has done, or is doing, or is threatening to do, some inequitable act to the injury of the plaintiff, and there is no adequate remedy in any other court.

Gibson's Suits in Chancery (7th ed. Inman 1988), § 3.

Jurisdiction has been increased to encompass specific actions, including:

- To aid judgment creditors to subject a debtor's property which cannot be reached by execution to the satisfaction of the judgment. T.C.A. § 16-11-104.
- To decide all disputes between the state and corporations, their stockholders or creditors. T.C.A. § 16-11-105.
- To aid creditors of a corporation, without obtaining a judgment at law, to attach the property of a corporation, and subject the same, by sale or otherwise, to the satisfaction of their debts, when the corporate franchises are not used, or have been granted to others. T.C.A. § 29-12-107.
- To decide all boundary line disputes. T.C.A. § 16-11-106(a).
- To enforce foreign judgments against the property of a nonresident debtor when the judgment creditor has exhausted his legal remedies. T.C.A. § 26-6-103 *et seq.*
- To approve the sale of property of a minor or disabled person. T.C.A. § 34-11-116).
- To compel the distribution of estates where there are difficulties, complexities, or conflicting claims. T.C.A. § 30-2-710.
- To remove the disability of a minor. T.C.A. § 29-31-101.

Concurrent Jurisdiction of Circuit and Chancery Courts. Chancery court has concurrent jurisdiction with circuit court to hear “all civil cases of action, triable in circuit court, except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to property not resulting from a breach of oral or written contract.” T.C.A. § 16-11-102.

Jurisdiction of Criminal Courts. The circuit courts have “exclusive original jurisdiction of all crimes and misdemeanors, either at common law or by statute, unless otherwise expressly provided by statute.” T.C.A. § 16-10-102. The criminal and circuit courts have “original jurisdiction of all criminal matters not exclusively conferred by law on some other tribunal.” T.C.A. § 40-1-108.

In addition to their original jurisdiction over felonies and misdemeanors, criminal courts have exclusive jurisdiction over special crime-related matters and non-criminal matters, including all

matters relating to the seizure and destruction of intoxicating liquors when an offense against a state liquor law has been committed. T.C.A. § 57-9-105. Criminal court judges possess magistrate powers and may issue warrants for the arrest of a person charged with a public offense. T.C.A. §§ 40-5-101, 40-5-102.

Unless otherwise provided, the circuit courts have appellate jurisdiction in all criminal cases and actions originally tried in inferior courts “whether brought by appeal, certiorari, or in any other manner prescribed by law.” T.C.A. § 16-10-112. Criminal courts have authority to grant extraordinary relief in appeals from courts of inferior jurisdiction. *Franks v. State*, 565 S.W.2d 36 (Tenn. Crim. App. 1977).

Criminal courts have appellate jurisdiction in post-conviction proceedings. T.C.A. § 40-30-103. A prisoner in custody under a state sentence may petition for post-conviction relief in the court where the conviction occurred within three years after an appeal is taken to the highest state appellate court. T.C.A. §§ 40-30-102, 40-30-103. The presiding judge will assign a judge to hear the petition. However, if a presiding judge is unable to assign a judge, the chief justice of the supreme court will assign the judge. The competency of counsel issue may be heard by a judge other than the original judge. T.C.A. § 40-30-103.

Criminal courts were also granted appellate jurisdiction over delinquency proceedings in the juvenile court by amendments to T.C.A. § 39-1-159 passed in 1997. These appeals shall be tried *de novo* by the criminal court.

General Sessions and other Inferior Courts

General Sessions Court. General sessions court judges must be: (1) thirty years old; (2) a Tennessee resident for five years; and (3) licensed to practice law in Tennessee. T.C.A. § 16-15-201. A judge is elected to an eight-year-term. T.C.A. § 16-15-202. Non-attorneys may serve as a general sessions judge in limited situations. T.C.A. § 16-15-5005. A county legislative body may not establish and fund additional part-time general sessions judges. The code simply allows private acts which would establish part-time general sessions judges in class 1, 2 or 3 counties. Op. Tenn. Att’y Gen. 93-52 (August 9, 1993). The circuit clerk acts as a general sessions clerk, unless a separate clerk is created by a private act. T.C.A. § 16-15-301.

Salaries are set by general law according to population class, which differs from the population class set forth for county officials. Judges in certain classes may receive additional compensation for additional jurisdiction. However, no general sessions judge shall receive a salary greater than that of a circuit judge. T.C.A. § 16-15-5003. While annual salary adjustments are built into the law, the general salary structure for judges may not be altered during their term. TENN. CONST., art. VI, § 7. A new term will begin on September 1, 1998. The General Assembly altered the salary structure for general sessions judges for this new term in 1997 Public Chapter 555.

Until the new term begins, general sessions judges’ salaries are annually adjusted in the following manner. Each July 1, the base salary (not including supplements) is adjusted based upon the percentage of change in the average consumer price index between the two calendar years preceding July 1 of the year in which the adjustment is made. For each full 2% increase in the average consumer price index between two successive calendar years, the *base* (not supplemental) salaries are adjusted by 1%. No annual adjustment shall exceed 4% regardless of the increase in the average consumer price index between any two successive calendar years.

Beginning with the new term of office on September 1, 1998, certain increases to general sessions judges salaries and supplements take effect. Also beginning on September 1, 1998, the general sessions judge will get the same annual salary adjustment as other judges in accordance with T.C.A. § 8-23-103 which provides for an increase that is equal to the increase in the consumer price index up to 5%. The increase shall not exceed 5% unless the consumer price index goes up in excess of 10% in which case the judge will get a 5% salary increase plus a one percent increase for each percent or fraction of a percent over ten that the consumer price index increases. Private acts may provide greater salaries, supplements and adjustments than that provided by general law, so long as the private act is effective prior to the beginning of the judge's term. T.C.A. § 16-15-5003.

Jurisdiction. The court has all of the jurisdiction, coextensive with the county, formerly exercised by justices of the peace in civil and criminal cases. T.C.A. § 16-15-501. General sessions courts have original jurisdiction in: (1) civil cases up to \$15,000 (in Shelby County the amount is \$25,000); (2) forcible entry and detainer actions; and (3) actions to recover personal property, where an alternative money judgment not to exceed \$25,000 may be awarded. Attorney’s fees, court costs and discretionary costs are not included in the calculation of whether a judgment entered by the general sessions court exceeds these monetary jurisdictional limits. T.C.A. §§ 16-15-501, 29-30-102. General sessions judges may issue restraining orders and enforce the penalty provisions for violating these orders. T.C.A. § 16-15-501. The court has jurisdiction to try misdemeanor cases and may

issue sentences within the limits provided by law for the particular offense. T.C.A. § 40-1-109. As amended in 1997, T.C.A. § 40-11-204 allows general sessions judges to also hear petitions for relief on forfeited recognizances.

In many counties, the general sessions court may have, by private or public act, other subject matter jurisdiction, including probate, domestic relations, and workers' compensation. *See* T.C.A. §§ 16-15-401, 40-6-214 (arrest warrants), 27-8-105 (certiorari), 17-2-209 (divorce interchange), 17-2-208 (interchange), and private acts relative to jurisdiction in the various counties.

Civil cases, originating in general sessions court and appealed to a higher court, shall not be dismissed for informalities, but shall be tried on the merits of the case. The higher court shall allow all amendments in the form of the action, the parties in the case, or the statement of the cause of action when necessary to reach the merits. The trial, including damages awarded, is *de novo*. T.C.A. § 16-15-729.

Juvenile Courts. The general sessions court, except those with a special juvenile court established by private act, has juvenile court jurisdiction. T.C.A. § 37-1-203. Every court having juvenile jurisdiction must have a sign in a conspicuous place identifying it as “Juvenile Court.” T.C.A. § 37-1-206. The general sessions court when acting as juvenile court has the title and style of “juvenile court of _____ county.” T.C.A. § 37-1-204. However, the legislature did not intend to make the juvenile court a general sessions court. The intent was to transfer juvenile court jurisdiction to the general sessions court and to make the general sessions court a juvenile court when the subject matter before the court was within the jurisdiction conferred upon juvenile courts. *State ex rel. Winberry v. Brooks*, 670 S.W.2d 631 (Tenn. Ct. App. 1984). Only general sessions judges who are licensed to practice law in Tennessee may order commitment of a juvenile to the Department of Correction. T.C.A. § 37-1-203. If the judge is not licensed to practice in Tennessee, a lawyer-referee is appointed to handle such matters. T.C.A. § 37-1-107. The juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings arising from the 1980 Hague Convention on the Civil Aspects of International Child Abduction. T.C.A. § 37-1-104.

Pursuant to 2000 Public Chapter 792, juvenile judges are authorized to establish a teen court program. The teen court is given the authority to conduct proceedings, receive evidence, hear testimony related to the dispositional stage and recommend disposition of the case. For any particular case, the teen court consists of five teen members chosen from a panel of twelve or more teenagers appointed by the juvenile court judge.

General Sessions and Juvenile Court Interchange.

The legislature amended Titles 16 and 17 of the Tennessee Code in 1997 to allow greater interchange and substitution of general sessions and juvenile court judges. Under T.C.A. § 16-15-209, general sessions and juvenile judges may interchange with each other. The substituting judge need not be a resident of the same county, but must otherwise possess the same qualifications of the absent judge. Under amendments to T.C.A. § 16-15-209 in the same public act, general sessions and juvenile judges who must be absent from court may seek a special judge. The judge must first attempt to interchange within the county, then with a current, former, or retired judge, then apply to the Administrative Office of the Courts for assistance, and finally, after exhausting these options, may appoint a lawyer from a list of qualified attorneys to serve as judge subject to certain limitations.

Probate Courts. Chancery court has exclusive jurisdiction to probate wills and administer estates, unless provided otherwise by private act. T.C.A. § 16-16-201. The clerk and master exercises probate jurisdiction, unless otherwise provided. The most common alternative is a private act granting probate jurisdiction in the general sessions court with the county clerk serving as probate clerk.

Special Courts. Occasionally, public or private acts create courts to exercise particular jurisdiction in a county. Some counties have chosen through private acts to have separate special jurisdiction courts. As noted above, probate jurisdiction is in chancery court unless it is placed in another court by a special act. Similarly, general sessions court has juvenile jurisdiction, unless it is placed in another court by private act. Some counties have combined specialized jurisdictions to create new court titles. The clerk of these courts is designated in the private acts creating these courts. The judge's salary is determined according to the special legislation. Cases from these special inferior courts may be appealed to the circuit court for a *de novo* trial.

Judicial Commissioners

In most counties (and all under 200,000 population) the legislative body may elect one or more persons to serve as judicial commissioners whose duties include, but are not limited to:

1. Issuing arrest and search warrants upon a finding of probable cause;
2. Issuing mittimus following compliance with lawful procedures;
3. Appointing attorneys for indigent defendants; and
4. Setting and approving bonds and the release on recognizance of defendants.

A judicial commissioner elected by the county legislative body is considered a county officer and serves a fixed term set by the county legislative body, but the term may not be longer than four years. Judicial commissioners are compensated from the county's general fund in an amount determined by the legislative body. All fees collected by judicial commissioners must be paid to the county general fund. T.C.A. § 40-1-111. No search warrant, arrest warrant or mittimus may be issued by an official whose compensation is contingent *in any manner* upon the issuance or non-issuance of such warrants or mittimus. T.C.A. § 40-5-106.

CHAPTER 10

PUBLIC SAFETY AND COUNTY CORRECTIONAL/ FACILITIES

County Fire Protection

The county legislative body may form an agency to provide countywide fire protection whose powers and duties are delegated by the legislative body and provided by statute. T.C.A. §§ 5-17q-101, 5-17-102. The countywide fire department is empowered to do all things necessary to provide coordinated fire protection to all areas of the county. T.C.A. § 5-17-102. The county fire chief is appointed by the county executive subject to confirmation by the county legislative body. T.C.A. § 5-17-103. The county fire department must have one or more districts comprising the entire county outside the incorporated municipalities if property taxes are used to fund the department. However, a municipality may contract with the county for inclusion in the district. T.C.A. § 5-17-105. A county may fund protection of the unincorporated areas of the county with general fund revenues so long as the revenues were generated by situs based taxes collected in the unincorporated areas or are monies that have already been shared with municipalities, or are contributions to the county. T.C.A. § 5-17-101. The countywide fire department must prepare an annual budget of anticipated receipts and expenditures which must be submitted to the legislative body. T.C.A. § 5-17-104. If fire tax districts are created, then the legislative body must levy an annual fire tax upon the property owners of each district sufficient to pay the district's share of the total budget of the countywide fire department. T.C.A. § 5-17-106.

The county legislative body may appropriate general fund money to assist nonprofit volunteer fire departments. T.C.A. § 5-9-101. Counties may also contract with municipalities to furnish fire protection in the unincorporated areas as an alternative to forming a county fire department. Op. Tenn. Att'y Gen. 93-53 (Aug. 9, 1993).

Civil Defense (Emergency Management)

The Tennessee Emergency Management Agency (TEMA) under the direction of the Governor is in charge of the management of disasters occurring in this state. Counties must establish a county emergency management agency alone or in conjunction with other local governments. Each county organization must have a director appointed by the county executive subject to confirmation by the county legislative body. Each county must have an emergency management plan and program which is coordinated with TEMA. Each county emergency management agency has jurisdiction over the entire county unless an inter-jurisdictional emergency management agreement exists which has been recognized by the Governor by executive order or rule. Under this law, counties have extensive power to provide funds, make contracts, employ personnel, assign and make available county personnel and resources to perform emergency management functions, and to establish, as necessary, a primary and one or more secondary emergency operating centers. In the event of an emergency, the county may waive the procedures and formalities otherwise required by law. Two or more counties may join together to provide emergency management services if approved by the Governor. This may occur by request of the counties or upon a finding by the Governor that the conditions of the counties require such pooling of resources.

The act grants to the Governor extraordinary powers in a state of emergency, including direction (orders) to local law enforcement officers and agencies as may be reasonable and necessary, and may delegate emergency powers and responsibilities to county officers and agencies.

County employees and equipment may act outside of the county to render aid when needed. Counties may enter into mutual aid agreements with municipalities and other counties. Public Acts of 2000, Chapter 946.

Emergency Communication Districts

The establishment of a uniform emergency number to shorten the time required for a citizen to request and receive emergency aid is intended to save lives, reduce the destruction of property, quickly apprehend criminals and save money. Therefore, the legislative body may create an emergency communications district within all or part of its boundaries if the eligible voters in the district approve. The 911 service is funded by an emergency telephone service charge in telephone bills and county appropriations. T.C.A. §§ 7-86-102, 7-86-105, 7-86-108. The legislative body may, by 2/3 vote, reduce the emergency communication district levy established by the district's board of directors, so long as this reduction does not reduce funding below the level reasonably required to fund the authorized activities of the district. The reduced levy remains effective until rescinded by a majority vote of the legislative body. T.C.A. § 7-86-108(c). Revenues from tariffs must be used for the operation of the district and for the purchase of necessary equipment. T.C.A. § 7-86-108(d).

The board of directors of the emergency communication district consists of seven, eight or nine members as provided by resolution of the county legislative body. The county executive appoints members to this board, subject to confirmation of the county legislative body. T.C.A. § 7-86-105(b).

Public Chapter 1108 of 1998, codified in T.C.A. §§ 7-86-301 and following, created a nine-member statewide Emergency Communications Board in the department of Commerce and Insurance to oversee the implementation of enhanced 911 service to wireless telephone users. In addition to levying a service charge on wireless phone service and implementing the new network, this board has certain supervisory powers over local 911 boards, particularly as it relates to financial stability. The board can set rules and regulations for the operation of emergency communications districts, examine the financial condition of districts, prescribe a rate structure, raise rates or order the consolidation of districts. If counties have not created a district by 2001, the board will order an election for the purpose of establishing a district for that county. This public chapter also provides for the removal of members of a local board of directors of an emergency communications district for failure to attend meetings, refusal to carry out the orders of the state board, or for neglect of duties. The state board, the city, or the county may pursue such an action in the chancery court.

County Law Enforcement

The sheriff is the principal conservator of peace in the county, and must suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other breaches of the peace. T.C.A. § 38-3-102. County law enforcement officers must uphold and enforce state laws dealing with crimes against persons, property, the administration of government and offenses against the public health, safety and welfare.

Sheriffs' departments may also enforce municipal ordinances if the municipality has expressed by ordinance its intent to have the sheriff do so. T.C.A. § 8-8-201.

In-service Training

Under legislation passed in 1997, sheriffs must now complete forty hours of annual in-service training pursuant to T.C.A. § 38-8-111. Sheriffs who successfully complete the program will receive cash salary supplements for doing so. Certification under the Peace Officers Standards and Training commission is now a requirement for sheriffs. Any person elected to the office of sheriff who is not POST certified must enroll in a training course within six months of taking office. The salary of the sheriff is reduced 15% if he or she is not POST certified upon taking the office and, until the sheriff becomes certified, will continue to drop an additional 5% with each year of the term of office.

Drug Law Enforcement and Drug Abuse Prevention.

A significant portion of the Sheriff's duties will concern the enforcement of drug laws and the prevention of drug abuse and illegal drug trafficking in the county. This is an area that has seen a great deal of new legislation in the past decade.

A state fund has been established to provide financial incentives for drug education and prevention. Through the use of such financial incentives, the state encourages counties to aggressively pursue a course to eliminate illegal drug trafficking within its jurisdictional boundaries. Each county legislative body may create a committee composed of the school superintendent, the sheriff, and a member of the alliance for a drug free Tennessee established in the county, to be appointed by the county executive. The committee reviews the record of prosecutions and convictions in the county, and acts with the sheriff to determine the financial incentives appropriate for any given period and the percentage of goods seized and forfeited that should be made available to the school system for drug education and prevention programs. T.C.A. § 38-11-204.

A minimum fine must be imposed in drug cases unless the defendant is indigent. T.C.A. § 39-17-428. Generally, fines and forfeitures of appearance bonds in drug cases are paid to the county trustee, the state treasurer, the Department of Safety or the Project Caanan Coordination Office, depending upon the violation. T.C.A. § 39-17-420. Each county trustee must maintain a separate fund, commonly called the drug fund. Formerly, the sheriff, with the approval of the district attorney general, could obtain disbursements from this fund for the local drug law enforcement program or local drug education program. Under T.C.A. § 39-17-420, these monies must now be budgeted. The sheriff recommends a budget for these funds to the county legislative body which must approve the budget. The changes in the law which took effect July 1, 1997, also expand the approved uses of these funds to include drug education, treatment, and enforcement as well as non-recurring law enforcement expenses. Funds used for undercover operations of the sheriff's department must be administered according to procedures established by the Comptroller of the Treasury. A portion of the monies in this fund is to be set aside for the purchase of electronic fingerprinting equipment for the county.

D.U.I. Forfeitures

In a similar manner to drug forfeitures, a driver's vehicle may now be forfeited where the driver is guilty of certain offenses related to driving under the influence of alcohol. T.C.A. §§ 55-50-504, 55-10-403. When vehicles are seized pursuant to these laws, their disposition is determined according to the procedures of T.C.A. § 40-33-211, which provides for an administrative hearing before the

Department of Safety. If the vehicle is forfeited and sold, the county is entitled to a portion of those proceeds as reimbursement for the costs of seizing and storing the vehicle. T.C.A. § 40-33-211.

Fingerprinting

In an effort to improve arrest data on dangerous felons, the legislature enacted financial penalties for law enforcement offices that fail to properly fingerprint criminals taken into custody. The sheriff's office is to take two full sets of fingerprints of persons arrested for an offense which results in their being incarcerated or having to post bond to avoid incarceration and forward these fingerprints to the TBI. T.C.A. § 8-8-201. The Comptroller's Office is directed to audit local law enforcement offices to make certain this duty is performed. Failure to retain classifiable fingerprints for at least 85% of those persons arrested by the office can cause the office to be decertified by the POST commission and result in the loss of salary supplements. T.C.A. § 8-4-115.

Handgun Permits and Firearm Purchases. As of October 1, 1996, sheriffs ceased to issue handgun permits. The Tennessee Department of Safety has taken over these duties. The department notifies the sheriff or other chief law enforcement officer of the county of the applicant's residence. Then the sheriff or other officer conducts a background investigation regarding the applicant's disclosure on the application. Reports from the sheriff are to be filed within fifteen days of receiving a copy of the application. 1996 Public Chapter 905, amending T.C.A., title 39, chapter 17, part 13.

County Correctional Facilities and Prisoner Care

Sheriffs execute court orders for imprisonment issued in criminal cases by assuming custody and committing a defendant to jail, workhouse or to the warden of the state penitentiary. T.C.A. §§ 40-23-103, 40-23-104.

Custody of the Jail. The sheriff has custody and charge of the county jail and all prisoners legally committed. Jailers may be appointed to oversee the daily operations of the facility, but the sheriff remains liable for civil damages for the actions of such person. T.C.A. §§ 8-8-201, 41-4-101.

The jail is commonly used to house prisoners sentenced to imprisonment by the criminal court in the county. However, according to T.C.A. § 41-4-103, the jail may also be used as a facility for the safekeeping or confinement of the following other persons:

1. Persons awaiting trial for public offenses;
2. Convicts sentenced to imprisonment in the penitentiary, until their removal;
3. Persons committed for contempt or on civil process;
4. Persons committed on failure to give security for their appearance as witnesses in any criminal cases;
5. Persons charged with or convicted of a criminal offense against the United States;
6. Insane persons, pending transfer to the insane hospital, or other disposition; and
7. All other persons committed by authority of law.

The jailer may evaluate persons held in the county jail for the purpose of classification, management, care, control, and cell assignment. T.C.A. § 41-4-103. The process employed in committing or discharging a prisoner from jail must be filed and safely kept by the sheriff or the jailer. T.C.A. §

41-4-106. When a defendant charged with a felony is committed to the jail and the defendant's safety requires a guard, the sheriff must employ a sufficient guard to protect defendant from violence and to prevent escape or rescue. T.C.A. § 41-4-118. If the county jail is insufficient to safely keep a prisoner, the sheriff may convey the prisoner to the nearest sufficient jail in the state. T.C.A. § 41-4-121. The sheriff may employ two persons, if necessary, to remove the prisoner to the nearest sufficient jail. T.C.A. § 41-4-122.

Jailers' Fees. The legislative body may pass a resolution fixing the amount of jailers' fees which may be applied to misdemeanor prisoners. T.C.A. § 8-26-105. To receive the fees, the sheriff or jailer must make written statements of accounts, properly proven and sworn to, for the keeping of prisoners, specifying distinctly each item and the amount due. T.C.A. § 41-4-129. The jailers' fees are taxed separately from the general bill of costs of criminal cases, and the jailers' fees for county prisoners must be referred monthly to the county executive for audit and inspection. T.C.A. §§ 41-4-131, 41-4-136. The federal marshal or other person delivering federal prisoners to the jail is liable to the jailer for fees and the subsistence of the prisoner while confined, which shall be the same as those prisoners committed under authority of the state. T.C.A. § 41-4-105.

Custody of the Workhouse. Counties, through their legislative bodies, may establish and maintain portable, movable or stationary workhouses. T.C.A. § 41-2-101. Any county not having a separate workhouse may, through its legislative body, declare its jail to be a workhouse if the jail has sufficient capacity and is suitable for that purpose. T.C.A. § 41-2-102. When a county establishes a separate workhouse or the jail has been declared a workhouse, the legislative body must elect four competent persons, who, in conjunction with the county executive, shall be known as the board of workhouse commissioners. The executive shall be, ex officio, the chair of the board. T.C.A. § 41-2-104. Upon the recommendation of the county executive and a resolution passed by a 2/3 vote of the legislative body, two alternatives to the workhouse commission are allowed; the county may choose the executive or the sheriff to administer the workhouse with the same authority of a workhouse commission. T.C.A. § 41-2-104.

If the county jail has been declared a workhouse, the sheriff is the superintendent. T.C.A. § 41-2-108. If the workhouse is a separate facility and the superintendent is not the sheriff, the superintendent must take an oath and post bond with two or more sureties in the amount of \$1,000, payable to the state for the use of the county to be filed with the county clerk and recorded in the minutes of the legislative body. T.C.A. § 41-2-107. The superintendent's salary is set by the workhouse commissioners, unless the sheriff acts as superintendent, in which case there is a supplement to the regular salary of the sheriff. T.C.A. §§ 8-24-103, 41-2-107.

Superintendent's duties. The workhouse superintendent has the following duties:

1. Discharge each prisoner as soon as his or her time is completed, or upon order of the board of commissioners;
2. Properly guard the prisoners to prevent escape;
3. Ensure the humane treatment of the prisoners, and properly provide clothing, wholesome food properly cooked three times a day when at work;

4. Ensure that the prisoners are warmly and comfortably housed at night and in bad weather;
5. Provide proper medicine and medical treatment if a prisoner is sick, and, in case of death, secure decent burial; and
6. Keep the males separate from the females.

T.C.A. § 41-2-109.

The superintendent also has the following record-keeping duties:

1. Keep in a well-bound book, supplied by the county, an account of all supplies, implements and tools purchased for the workhouse, keeping the supplies separate from implements and tools;
2. Obtain an itemized bill for every purchase made specifying from whom purchased, the kind and amount of articles purchased, and the date of purchase;
3. Submit quarterly reports to the commissioners;
4. Keep a record of the bills paid by the state for the board of state prisoners; and
5. Determine the number of prisoners held and bills for the same, to be sworn to by the sheriff or superintendent and certified by the clerk.

T.C.A. §§ 41-2-110, 41-2-119.

For every prisoner confined in the workhouse, the superintendent will receive a certified statement from the court clerk which states the name of the convict, date of sentence, crime committed, imprisonment term, and amount of fine and cost, which is entered into a book. The superintendent must keep a record of the age, sex, complexion, color of hair and eyes and nationality of each convict. T.C.A. § 41-2-116.

Prisoners confined to the workhouse or jail for a period less than one year for either a misdemeanor or a felony may have their sentences reduced for good behavior. If a prisoner violates the rules or regulations of the facility or engages in improper conduct, the sheriff or the superintendent, may, after a hearing before a disciplinary review board, revoke all or part of the prisoner's good time credit. T.C.A. § 41-2-111. Prisoners who refuse to work or become disorderly may be placed in solitary confinement or may be subject to some other form of humane punishment, including reducing time credits. T.C.A. § 41-2-120.

Support and Care of Prisoners. The sheriff or jailer has several responsibilities regarding the support and care of prisoners in the jail, and if any of these duties are violated, the authorized person may be guilty of a misdemeanor. T.C.A. § 41-4-117.

1. The jailer must furnish adequate food and bedding. T.C.A. § 41-4-109.
2. The jailer must enforce personal cleanliness by: furnishing necessary shaving equipment once a week, providing separate bathing facilities with hot and cold water, and laundering once a week for those prisoners unable to provide for themselves. T.C.A. § 41-4-111.

3. Filth must be removed from each cell once every twenty-four hours. T.C.A. § 41-4-111.
4. Male and female prisoners, except married couples, may not be kept in the same cell or room in the jail. T.C.A. § 41-4-110.
5. After examining and committing prisoners, the jailer must convey letters from prisoners to their counsel and others, sealing and putting the letters in the post office if required. T.C.A. § 41-4-114.
6. The jailer must admit all persons having business with prisoners and be present at all interviews between the prisoners and others, except their counsel. T.C.A. § 41-4-114.
7. The sheriff or an authorized person must remain at the jail every night from 8 p.m. to 6 a.m.. T.C.A. § 41-4-113.

Each prisoner committed to jail may furnish his or her own necessities under such precautions as deemed proper by the jailer for the purpose of guarding against escapes and to prevent intoxicants or narcotics from being imported into the facility. If the prisoner does not provide the support, it must be furnished by the jail. T.C.A. § 41-4-108.

Counties may, by a resolution adopted by a two-thirds vote of its legislative body, establish and implement a plan authorizing the jail or workhouse administrator to charge an inmate a fee, not to exceed the actual cost, for items issued to inmates upon each new admission to jail. These fees may be deducted from the inmate's jail trust account or similar fund. However, nothing in this authorization shall be construed as authorizing a county or municipality to issue necessary clothing or hygiene items based on the inmate's ability to pay. T.C.A. § 41-4-142.

It is illegal for any law enforcement officer or correctional officer to engage in sexual conduct, whether consensual or not, with a prisoner or inmate in custody at a penal institute. T.C.A. § 41-21-241

Medical Care of Prisoners. The legislative body must provide medical care for the prisoners and must allow compensation to be paid to the county jail physician. T.C.A. § 41-4-115. If there is no physician, the county may contract for such services with a private physician. T.C.A. § 41-2-118. The sheriff may hire a female registered nurse and a male registered nurse who may make a complete physical examination of all prisoners in the sheriff's custody. The examinations may include taking any tests which are approved and recommended by the county health officer. Female prisoners may be examined only by the female nurse, and male prisoners may be examined only by the male nurse. T.C.A. § 41-4-138. The state is liable for any expenses incurred from emergency hospitalization and medical treatment rendered to any state prisoner incarcerated in a county jail or workhouse, if the prisoner is admitted to the hospital. T.C.A. § 41-4-115.

The United States Supreme Court has held that prisoners have a constitutional right to receive necessary medical care while in custody. *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239 (1983). If the county fails to provide necessary medical care, it may be liable under federal law for any injuries that prisoner may suffer as a result of lack of medical care. Op. Tenn. Att'y Gen. U90-134 (Sept. 20, 1990). The provision of medical care does not necessarily obligate the county to pay for the services, but if the only way that the county can fulfill its obligation is to agree to pay for the services, then the county must do so. If the inmate has health insurance, then the insurance

carrier may be required to pay according to its obligations under contract. Op. Tenn. Att’y Gen. 96-008 (Feb. 8, 1996). Also, the county may collect from a non-indigent inmate housed in the county jail the cost of providing needed medical or dental care. If the inmate is indigent, the responsibility for payment is a matter to be decided between the county and the medical provider. The county may attempt to recover these medical costs from the prisoner after the prisoner is released from the jail or workhouse. Op. Tenn. Att’y Gen. 95-095 (Sept. 15, 1995). The county cannot require the prisoner to serve a longer sentence to pay the medical costs. Op. Tenn. Att’y Gen. U90-37 (Jan. 1, 1990).

The state is liable for expenses incurred for emergency hospitalization and medical treatment of state prisoners incarcerated in a county jail or workhouse so long as the prisoner is admitted to the hospital. The state will reimburse the cost of transportation (and the cost of a guard if necessary) if a prisoner is hospitalized or follow-up treatment is required. T.C.A. § 41-4-115. If the county incurs non-emergency medical expenses on behalf of a state prisoner, the county may seek reimbursement from the prisoner. Op. Tenn. Att’y Gen. 89-133 (Oct. 4, 1989).

Any county legislative body may, by two-thirds majority, adopt a resolution to establish a plan authorizing the jail or workhouse administrator to charge an inmate in a county jail or workhouse a co-pay amount for any medical care, treatment or pharmacy services provided to such inmate by the county. The resolution would establish the amount the inmate is required to pay for each service provided. If an inmate cannot pay the co-pay established, the plan may authorize a deduction from the inmate’s commissary account or any other account or fund for the benefit of the inmate while incarcerated. Also, the resolution and plan may authorize the jail or workhouse administrator to seek reimbursement for the expenses incurred in providing medical care, treatment, hospitalization or pharmacy services from an insurance company, health care corporation, TennCare or other source, if the inmate is covered by an insurance policy, TennCare or subscribes to a health care corporation or other source for these expenses. T.C.A. § 41-4-115(d). However, as of this writing, TennCare does not offer benefits to persons incarcerated. Furthermore, a county should not deny treatment for failure of an inmate to make the co-payment for the reasons noted earlier. T.C.A. § 41-4-115.

Minimum Standards for Facilities and Prisoner Care. The Tennessee Corrections Institute establishes minimum standards for local jails and workhouses and conducts an annual inspection of each county facility. These regulations include standards for physical facilities, correctional programs of treatment, education and rehabilitation of inmates, and standards for the safekeeping, health and welfare of inmates. T.C.A. § 41-4-140.

In addition to state inspection, counties have the option of establishing a local inspection program. In January, the legislative body may appoint three county residents of lawful age to act as county jail inspectors. The county executive is an ex officio jail inspector. The inspectors must: (1) visit and examine the county jail at least once each month or sooner; (2) make rules and regulations to preserve the health and decorum of the prisoners; (3) decide all disputes between the jailer and the prisoners; (4) provide for the restraint of violent prisoners or those who attempt to escape; and (5) make a report of the state and condition of the prisoners and the jail during the first week of every legislative b o d y m e e t i n g . T . C . A .
§ 41-4-116.

If an overcrowding emergency exists, the governor may invoke one or both of the following powers to reduce overcrowding. First, the governor may direct the board in writing to reduce the release eligibility dates of all inmates, excluding any inmate convicted of escape, by a percentage sufficient to enable the board to release on supervised parole enough inmates to reduce the population to 90% of the designated capacity. The Department of Correction must calculate the new release eligibility date of any felony offender sentenced to confinement for one or more years in the department or a county jail or workhouse. Second, the governor may direct the commissioner in writing to notify all state judges and sheriffs that the commitment to the department of felons who have been on bail prior to their convictions shall be stayed until up to sixty days after the in-house population has been reduced to 90% of the designated capacity. Inmates who have been convicted of two or more aggravated rape or rape violations are not eligible for release. T.C.A. § 41-1-504.

Work and Education Programs

Road Work and Other Prisoner Work Programs. If the county has a work program, all inmates sentenced to the workhouse or jail must participate in the work program unless the inmate has a medical condition that prevents him or her from working or the sheriff determines that the inmate is a security risk. Prisoners refusing to participate will lose sentence reduction work credits, good behavior credits, or other privileges. T.C.A. § 41-2-150.

The board of workhouse commissioners prescribes the kind of labor the prisoners are worked. However, when practical, the prisoners should work on county roads in preference to other kinds of labor. T.C.A. § 41-2-105. All prisoners sentenced to the workhouse may be required to work on the county roads under the supervision of the chief administrative officer of the county highway department and may be utilized by municipalities within the county by mutual agreement between the workhouse superintendent or sheriff and the municipality's chief executive officer. T.C.A. § 41-2-123.

Any prisoner sentenced to imprisonment in a workhouse or jail for a period not to exceed eleven months and twenty-nine days may be worked on the county roads, or roads within municipalities in the county, or on parks or public property in the county. These prisoners may be required to pick up and collect litter and trash that have accumulated on county roads, and are supervised by the sheriff or the superintendent. T.C.A. § 41-2-123.

Neither the county, county official nor county employee is liable to any prisoner or his family for death or injuries received while on a work detail, other than for medical treatment for the injury during the period of his confinement. Also, no county, official or employee liability exists under state law for acts of the prisoner while on work detail. T.C.A. § 41-2-123.

Work Release. Misdemeanants and felons whose sentences are not based on crimes against persons or property and have no previous sentences for such crimes, are eligible to apply for releases for occupational, scholastic or medical purposes. T.C.A. §§ 41-2-127, 41-2-128. Decisions regarding work release from a county workhouse are made by the board of workhouse commissioners upon application of the workhouse superintendent. In the case of work release from the county jail, the general sessions court decides upon application by the sheriff. The order granting or denying release may be rescinded or modified at any time without notice to the prisoner. T.C.A. § 41-2-128.

Special work release rules apply to persons convicted of second violations of driving under the influence of a drug or intoxicant (DUI) or driving after the person's drivers license has been canceled, suspended or revoked. The judge may sentence such offenders to the work release program under specified circumstances if the second violation did not result in personal injury or death of another person. As a condition to participation in the work release program, the inmate must agree to be screened, at least daily, to determine whether the inmate has consumed alcohol or illegal drugs. Such persons remain incarcerated when not at the place of employment or in transit to or from the place of employment. The county legislative body is required to annually conduct a public hearing to examine whether the work release program for DUI and driver's license offenders is working according to the statutory directives and whether or not the program is effective. If the county legislative body finds that this work release program is operated in compliance with the law, then it is required to certify this finding to the judge having jurisdiction in the case, and if the finding is one of non-compliance with the law, then this finding is also transmitted to the appropriate judges. T.C.A. § 41-2-128(c).

The work release program is directed by a work release commission. Except in Davidson County, this work release commission is composed of three members appointed by the sheriff and approved by the legislative body. The commission may develop guidelines for work release and educational programs for prisoners housed in county facilities. The work release commission meets weekly, or at the call of the sheriff, at the sheriff's office. T.C.A. § 41-2-134.

The sheriff, the correctional/rehabilitation work release coordinator, and the warden of the workhouse must establish rules and regulations to operate the work release program in an orderly manner. These rules are subject to the approval of the work release commission. T.C.A. § 41-2-141.

The official in charge of the jail or workhouse may refuse to permit a prisoner to exercise the work release privilege to leave the workhouse for any breach of discipline or other jail or workhouse rule violation. T.C.A. § 41-2-131. The work release commission may remove a prisoner from the work release program for just cause, and the prisoner may remain at the workhouse to complete the sentence. T.C.A. § 41-2-136. Failure of a prisoner to return from work at the time specified constitutes prima facie evidence of intent to escape and subjects the prisoner to the penalties imposed by law for the offense of escape. T.C.A. § 41-2-137.

The county legislative body may authorize the sheriff, warden, superintendent, or other person in charge of the workhouse to arrange the employment of prisoners in other counties. T.C.A. § 41-2-130. In addition, the sheriff, warden, superintendent or other administrative head of a workhouse may contract with any other governmental agency with regard to accepting prisoners in the custody of such other governmental agency to participate in the work release program, subject to the approval of the county legislative body. T.C.A. § 41-2-132.

A sheriff, jailer or other person responsible for the care and custody of inmates housed in a county jail or workhouse may not employ or use any inmate to perform labor which directly or indirectly results in personal gain, profit or benefit to a business partially or wholly owned by the sheriff, jailer or other person, *whether or not the inmate is compensated*. T.C.A. § 41-2-148.

Further, a sheriff, jailer or other person responsible for the care and custody of inmates housed in a county jail or workhouse may not allow any inmate to perform any labor for gain, profit or for the

benefit of a private citizen, or for-profit corporation, partnership or other business, *unless* the labor is part of a court-approved work release program or the work release program operates under a commission. Violation of these provisions is a misdemeanor for a first offense and a felony for a second offense. If a public official violates this law twice, the official's term of office is immediately forfeited and the official is forever barred from holding public office in this state. T.C.A. § 41-2-148. However, inmates housed in a jail or workhouse may perform any labor on behalf of a charitable organization or a nonprofit corporation. T.C.A. § 41-2-148.

Inmates must not be released except according to the strict rules and guidelines of the law and under the proper authority. The sentencing court judge has no authority to grant furlough to a defendant for the purpose of work unless the inmate meets all established standards and criteria. T.C.A. § 40-35-316.

Inmate Incentive Program. Shelby and Davidson counties must operate an inmate incentive program for workhouse prisoners. T.C.A. § 41-2-144. In other counties, sheriffs or workhouse superintendents may develop and implement such a program. Workhouse prisoners may be given credit toward reducing their sentences for participating in academic or vocational education classes and for above-average performance in the inmate's job placement. The program and rating system devised by the sheriff or workhouse superintendent is subject to the approval of the work release commission. T.C.A. § 41-2-145.

County Correctional Incentives Act. In 1981, the General Assembly enacted the County Correctional Incentives Act, which provides financial subsidies to counties for housing non-dangerous felony offenders in local jails or workhouses. The goals of the act are to: (1) help alleviate overcrowding and reduce higher operation costs in state correctional facilities; and (2) assist counties in upgrading local correctional facilities and programs. T.C.A. § 41-8-102.

Subsidies paid to counties through this program are the only compensation a county will receive from the state for housing state prisoners. These subsidies are paid in lieu of the reimbursement for jailers' fees previously given to counties from the state. T.C.A. §§ 8-26-105, 41-8-104, 41-8-106. If a county is approved for participation, the corrections commissioner may enter into a contract with that county on an annual basis. T.C.A. § 41-8-104. The counties are reimbursed for housing convicted felons according to the general appropriations act each year and the rules made in determining reasonable allowable costs by the department in consultation with the Comptroller of the Treasury. T.C.A. § 41-8-106.

Approved counties may apply to receive grants or loans from the state funding board to assist in constructing or renovating a correctional facility. In order to secure the loan or grant, which could amount to 100% of the actual project cost, the county must agree to reserve a percentage of the additional cell space for housing state prisoners. T.C.A. §§ 41-8-109, 41-8-110, 41-8-111.

Community Corrections Act of 1985. T.C.A. § 40-36-101 *et seq.* The purpose of the community corrections act is to establish a policy to punish selected, nonviolent felony offenders in community based alternatives to incarceration, and to provide state funds to local governments and qualified private agencies so they may develop a range of community based punishments. Before a county may qualify for funding under this act, the legislative body must establish a community corrections

advisory board. This board represents a cross-section of the local population and ensures minority and female representation. A minimum number of members is required; the statute sets forth the nominating procedure. Some members hold a position by virtue of their elected office. T.C.A. § 40-36-201.

The county legislative body empowers the board to perform certain duties, including:

1. Assessing community-wide needs and advising the legislative body regarding specific program options;
2. Participating in the establishment of local eligibility standards for local community corrections programs which meet the local needs of the community;
3. Adopting a community corrections plan to submit to the legislative body;
4. Adopting program policies;
5. Recommending to the legislative body the awarding of subcontracts to proprietary, nonprofit or governmental entities to provide community corrections services, in their discretion;
6. Monitoring the effectiveness of local community correctional services and advising the legislative body regarding needed modifications;
7. Informing and educating the general public regarding the need for diversion of selected nonviolent offenders from confinement in correctional institutions to gain greater public support for corrections; and
8. Making an annual report to the legislative body of the progress of the programs.

T.C.A. § 40-36-202.

Counties may apply to the state for 100% funding of local programs with no local matching funds required. In order to receive the funding, the county must submit an application to the commission using the appropriate form as determined by the commissioner. T.C.A. § 40-36-301. The act sets forth the criteria used by the department to determine which applying entities will receive funding. Funding and grant evaluation criteria is outlined in the application process and procedures are developed by the department so that each applicant may know the basis upon which funds will be granted. T.C.A. § 40-36-304. Funds may be used for non-custodial community correction options which involve close supervision but do not involve housing of the offender in a jail, workhouse, or community facility, and short-term community residential treatment options which involve close supervision in a residential setting, including emergency shelters, drug and alcohol treatment, and counseling. T.C.A. § 40-36-302. However, these funds may not be used for construction, renovation or operation of local jails or state facilities, or to pay the salaries of state probation and parole officers. Use of funds for administrative costs is limited to a percentage established by the corrections commissioner. T.C.A. § 40-36-303.

Joint (Multi-county) County Jails and Workhouses. Two or more counties may enter into an interlocal agreement providing for a jail and/or workhouse to serve the contracting counties. If such an interlocal agreement is executed to provide a jail for joint use of the contracting counties, a county is no longer required to have a county jail within the county's boundaries, but the jointly operated jail must be located within one of the contracting counties. T.C.A. § 5-7-105. In counties entering into such agreements, the sheriff is not in charge of the jail unless so provided by the interlocal agreement. T.C.A. § 8-8-201(3).

Detention of Juveniles

Counties are prohibited from detaining juveniles in the same facility with adult prisoners, except under two *very limited* circumstances. First, a juvenile may be temporarily detained in an adult jail for as short a time as feasible, not to exceed forty-eight hours, if:

1. The juvenile is accused of a serious crime against persons, including criminal homicide, forcible rape, mayhem, kidnaping, aggravated assault, robbery and extortion accompanied by threats of violence; and
2. The county has a low population density not to exceed thirty-five persons per square mile; and
3. The facility and program have received prior certification by the Tennessee Corrections Institute as providing detention and treatment with total sight and sound separation from adult detainees and prisoners, including no access by trustees; and
4. There is no juvenile court or other public authority, or private agency able and willing to contract for the placement of the juvenile; and
5. A determination is made that there is no existing acceptable alternative placement available for the juvenile.

T.C.A. § 37-1-116.

Second, a juvenile may be detained in an adult jail if the case has been transferred to another court for criminal prosecution, *i.e.*, the juvenile is being tried as an adult. T.C.A. §§ 37-1-116, 37-1-134. However, a juvenile cannot be detained in any secure facility or secure portion of any facility, unless:

1. There is probable cause to believe the juvenile has committed a delinquent offense constituting (a) a crime against a person resulting in the serious injury or death of the victim or involving the likelihood of serious injury or death to such victim or (b) the unlawful possession of a handgun or carrying of a weapon;
2. There is probable cause to believe the juvenile has committed any other delinquent offense involving the likelihood of serious physical injury or death, or a property offense constituting a felony, and the juvenile:
 - a. Is currently on probation;
 - b. Is currently awaiting court action on a previous alleged delinquent offense;
 - c. Is alleged to be an escapee or absconder from a juvenile facility, institution, or other court-ordered placement; or
 - d. Has, within the previous twelve months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult;
3. There is probable cause to believe the juvenile has committed a delinquent offense, and special circumstances indicate the juvenile should be detained;
4. The juvenile is alleged to be an escapee from a secure juvenile facility or institution;
5. The juvenile is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony in that jurisdiction; or

6. There is probable cause to believe the juvenile is an unruly child who has violated a valid court order or who is a runaway from another jurisdiction (nevertheless, the juvenile must not be detained for more than seventy-two hours); and
7. In addition to any of the conditions listed above, there is no less restrictive alternative that will reduce the risk of flight or serious physical harm to the juvenile or to others, including placement of the juvenile with a parent, guardian, legal custodian, or relative, using alternatives such as emergency foster homes, runaway/emergency shelters, juvenile summons, crisis intervention, or home detention, and/or the setting of bail.

T.C.A. § 37-1-114.

Juveniles who meet this detention criteria may be held in a juvenile detention facility in the same building or on the same grounds as an adult jail if:

1. Total separation exists between juvenile and adult facility spatial areas so there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities;
2. Total separation exists in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities;
3. There is separate juvenile and adult staff, including management, security staff, and direct care staff such as recreational, educational, and counseling. Specialized services staff, such as cooks, bookkeepers and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both; and
4. If state standards or licensing requirements for secure juvenile detention facilities are established, the juvenile facility must meet the standards and be licensed or approved as appropriate.

However, no juvenile facility constructed or developed after January 1, 1995, may be located in the same building or directly connected to any adult jail or lock-up facility complex. T.C.A. § 37-1-116.

If a juvenile is taken into custody and meets the detention criteria, a petition must be presented to the juvenile court by a person having knowledge of the facts alleged, no later than two days after the juvenile is taken into custody, excluding Saturdays, Sundays, and legal holidays. T.C.A. §§ 37-1-115, 37-1-119. The petition must state:

1. The facts which bring the juvenile within the court's jurisdiction with a statement that it is in the best interests of the juvenile and the public that the proceedings be brought and, if delinquency or unruly conduct is alleged, that the juvenile is in need of treatment or rehabilitation;
2. The juvenile's name, age and residence address;
3. The parents', guardians' or spouse's name and residence; and
4. If the juvenile is in custody, the place of detention and the time taken into custody.

T.C.A. § 37-1-120.

Juveniles who do not meet the criteria for secure detention must be released to the custody of a parent or guardian or to the supervisor of a non-secure program. T.C.A. §§ 37-1-115, 37-1-117.

The sheriff or other person in charge of a facility for the detention of adult offenders must inform the juvenile court immediately if a person who appears to be under the age of eighteen is received at the facility and then must bring the juvenile before the court upon request or deliver the juvenile to a detention or shelter care facility designated by the court or to a medical facility if the person requires prompt treatment for an illness or a serious physical condition. T.C.A. §§ 37-1-115, 37-1-116.

Information to At Risk Employees Regarding Infectious Diseases

Where there has been a potential exposure to an infectious disease in a correctional facility, the institution is required to inform an employee, contract employee or visitor. When an incident occurs that may have resulted in exposure to disease, the institution must test the inmate, with or without his or her consent, to determine if the inmate is infected with a bloodborne pathogen such as hepatitis B or HIV. The institution is required to disclose the results of the test to each employee, law enforcement officer or visitor who reasonably believes he or she was potentially exposed to a life-threatening disease or pathogen. However, confidential medical information is not to be released to the general public. T.C.A. § 41-51-102.

In 2000, the legislature passed a similar statute to provide that in cases where a law enforcement officer, firefighter, correctional officer, youth services officer, probation and parole officer, employee of the Department of Corrections or Department of Children's Services, emergency medical or rescue worker, EMT, or paramedic is the victim of an aggravated assault and comes into actual contact with the blood or other body fluid of the arrestee, then, upon the request of the victim, the arrestee shall undergo HIV testing immediately. The test shall be performed by a licensed medical laboratory at the expense of the arrestee. The results of the test are not a public record and are available to only the victim and certain other persons listed in the statute. If the arrestee is infected with HIV, such person shall be liable for the victim's medical bills and other expenses related to the victim's exposure to HIV upon a finding that such exposure was from the arrestee. Public Acts of 2000, Chapter 932.

CHAPTER 11

COUNTY ROADS AND HIGHWAY DEPARTMENTS

In Tennessee, the highway laws used to be disjointed and confusing. However, since the adoption of the Tennessee County Uniform Highway Law in 1974, the operation of the highway departments has become more consistent. All Tennessee counties are covered by this law, except Davidson, Hamilton, Knox, and Shelby counties. T.C.A. § 54-7-102. The charters (except Hamilton) and private acts for these counties determine their road construction and maintenance activities.

County Uniform Highway Law (“CUHL”)

The “chief administrative officer” (“CAO”) under the CUHL may be the county road superintendent, county road supervisor, director of public works, county engineer, or similar county highway official either elected or appointed pursuant to the provisions of any general or private act. T.C.A. § 54-7-103. The law prescribes the CAO's qualifications, term, salary, and manner in which vacancies should be filled. T.C.A. §§ 54-7-104 through 54-7-107. See Chapter 3 herein for a detailed discussion of the office.

Duties and Authority. The CAO is the head of the highway department and has general control over the location, relocation, construction, reconstruction, repair and maintenance of the county road system, including county roads, bridges and ferries, but not roads and bridges under the supervision of the state Department of Transportation. However, counties which have private acts providing for popularly elected road commissioners which have general control over location, construction and maintenance of county roads remain under their private act concerning these matters. T.C.A. § 54-7-109. See *also* Op. Tenn. Att’y Gen. 88-01 (Jan. 4, 1988).

The CAO may employ a qualified secretary and other office personnel necessary to handle correspondence, maintain accurate records of receipts and expenditures, equipment, supplies, materials, maintenance performed, and other items necessary to operate the highway department. The CAO determines the total number of employees, personnel policy and work hours, job classifications, and policies and wages within the classifications. The compensation established should be consistent with pay in similar services in the county and surrounding area. T.C.A. § 54-7-109. In addition, the wages must comply with the federal Fair Labor Standards Act regarding minimum wage and overtime compensation.

The CAO may employ legal counsel or solicit legal counsel retained by the county to prosecute or defend litigation caused by or necessary to operating the highway department. However, in counties with road commissions, the general control and authority to hire legal counsel remains as provided by private act. T.C.A. § 54-7-110.

Annual Work Program. The CAO must prepare and submit an annual work program to be financed under the state-aid highway system program to the county legislative body and the state Department of Transportation. The priorities for the proposed work program are established by considering the degree of deficiencies in the structural condition, capacity and safety of existing

roadways, traffic volume, and desirable level of services necessary for schools, religious institutions, industry, recreational facilities and other major uses. T.C.A. § 54-7-111.

Inventory of Machinery and Equipment. The CAO supervises, controls and is responsible for all the machinery, equipment, tools, supplies and materials owned or used by the county in the construction, repair and maintenance of county roads and bridges. Within sixty days after taking office, the CAO must make a complete inventory and file copies with the county governing body and the chief executive officer of the county. The inventory must be revised annually, effective July 1 of each year and submitted by September 1. T.C.A. § 54-7-112.

All machinery, equipment and tools must be plainly marked as the property of the road department and each item must be numbered and entered on the inventory filed by the CAO. The county executive must examine the inventory for compliance with the law, and if the inventory does not comply, funds shall be withheld from the chief administrative officer until compliance is made. T.C.A. § 54-7-112. The inventory filed by the CAO shall be maintained and made available to the Comptroller of the Treasury for audit purposes. T.C.A. § 54-7-112.

Purchasing Provisions and Chart of Accounts. All funds received by the county for road or highway purposes must be promptly deposited with the trustee and should be expended only upon disbursement warrant drawn upon the trustee according to law. Expenditures of funds to operate the road department must be made within the limits of the approved budget and the appropriations made for the department. T.C.A. § 54-7-113.

The following purchasing procedures apply to all CUHL counties which have not established any other private act or general purchasing procedure law prior to July 1, 1980:

1. All purchases of \$5,000 or more must be publicly advertised and competitively bid;
2. Purchases of like items which individually cost less than \$5,000, but are customarily purchased in lots of two or more, must be advertised and bid if the total purchase price of these items is expected to exceed \$5,000 during any fiscal year;
3. Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available need not be bid;
4. Purchases of any supplies, materials, or equipment for immediate delivery may be made without bidding in actual emergencies arising from unforeseen causes; but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs; and
5. Leases or lease-purchase arrangements requiring payment of \$5,000 or more, or continuing for ninety days or more, must be advertised and competitively bid.
6. All purchases costing less than \$5,000 may be made in the open market without newspaper notice, but, wherever possible, should be based upon at least three competitive bids.

T.C.A. § 54-7-113.

This act does not repeal existing statutes, including private acts, which establish purchasing provisions for a county road department. However, no county road department shall be required

to publicly advertise and competitively bid purchases of \$5,000 or less even if they are now required to do so by public or private act. T.C.A. § 54-7-113.

Each CAO must maintain a chart of accounts in conformity with the uniform chart of accounts developed by the Comptroller of the Treasury. T.C.A. § 54-7-113. Additional information is available through the County Audit Division of the state Comptroller's Office.

There is a presumption that the CAO is authorized to sign agreements with the Tennessee Department of Transportation on behalf of the county. Once the agreement is executed, it is fully binding on the county. This presumption is only overcome if the county legislative body provides notice to the Department of Transportation that the CAO does not have the authority to execute these agreements. Receipt of this notice must be acknowledged by the department in order to overcome the presumption. T.C.A. § 5-7-116.

Prohibited Acts and Penalties. The CAO must not authorize or knowingly permit the trucks or road equipment, rock, crushed stone or any other road material to be used for any private use or for the use of any individual for private purposes. A violation of this provision is a Class C misdemeanor, and each separate use of the same for other than authorized purposes constitutes a separate offense and is subject to a separate punishment. Any employee who uses any road equipment or materials for personal use, or sells or gives away any such materials or equipment must be immediately discharged. No truck or other road equipment shall be used to work private roads or for private purposes of the owners. T.C.A. § 54-7-202. However, if requested by the U.S. postal service or local board of education in writing, the county highway department may maintain areas on private property for the purpose of providing public school buses and postal vehicles with a route and turnaround, if the landowner consents in writing. T.C.A. § 57-7-202.

Neither the CAO nor any other county officer or employee may use any county vehicle, equipment, supplies or road materials for any use other than official county road purposes. However, the legislative body may authorize the road department to perform work for other government entities if the cost is reimbursed to the road department. T.C.A. § 54-7-202. For example, in 1995 the state attorney general opined that the county highway department may not maintain areas to provide school buses with a route or turn-around without requiring at least partial reimbursement. Op. Tenn. Att'y Gen. U95-064 (July 17, 1995). The county may even contract with the Commissioner of Transportation to perform maintenance upon state rights-of-way outside municipalities and metropolitan governments. The transportation department will reimburse the county on an actual cost basis. T.C.A. § 54-5-139. Any person whose property is improved by the use of county road equipment or material is liable for the value of the improvements, including legal fees, which will be distributed to the county road department. T.C.A. § 54-7-202. Also, a county highway department may not improve or maintain a road which has not been declared public by the county legislative body or the courts. Op. Tenn. Att'y Gen. U95-064 (July 17, 1995). Absent such a determination by one of those two bodies, the CAO should not work on that road even if he "thinks" the road is public.

If a CAO commits a theft, either directly or indirectly, of more than \$1000 of county highway or road money, the officer is guilty of a felony. Upon conviction, the CAO shall be punished by imprisonment in the penitentiary for any time not less than three years nor more than twenty years. T.C.A. § 54-7-

206. If the theft is \$1000 or less, the CAO is guilty of a misdemeanor. Upon conviction, the CAO shall be punished by confinement for not more than one year. T.C.A. § 54-7-206.

If a CAO, who is charged with the collection, safekeeping, transfer, or disbursement of money or property belonging to the county highway department, uses or diverts any part of the money or property by loan, investment, or otherwise without authority of law, or converts any part to his own use in any manner, the CAO is guilty of embezzlement. For every such act, upon conviction, the CAO shall be punished as in the case of larceny, and must pay to the court an amount equal to the amount embezzled. Such amount shall be forwarded by the clerk to the county highway department. T.C.A. § 54-7-206.

It is unlawful for crushed limestone, commercial lime, agricultural lime, gravel, or any other product resulting from processing of stone, produced in whole or in part by any governmentally owned or operated plant, quarry, crusher, or stone processing plant to be sold, traded, bartered, loaned, or given away. T.C.A. § 12-8-101. A violation of this section results in a Class C misdemeanor. T.C.A. § 12-8-102. However, counties *may* sell agricultural lime to farmers for their own farming activity. T.C.A. § 12-8-103.

It is unlawful for the county to own or operate any plant or facility for the manufacture or production of hot mix asphalt. However, counties owning such facilities in existence on March 29, 1976, are exempted from this provision. Several other counties are exempted by narrow population classification. T.C.A. § 12-8-101(b).

Counties may make improvements on existing highways on the state highway system within the particular county, but only with the approval of the Commissioner of Transportation. These improvements may be made by the highway department or through contract with private companies, if approved by the commissioner. Maintenance of improvements by the county which benefits the state highway system becomes the responsibility of the state when the county work is completed. T.C.A. § 54-5-140.

County highway departments may accept donations of materials, property, services, funds, or supplies for its benefit if used in good faith according to the terms of the donation. Also, the highway department may allow private persons or entities to repair county roads damaged by that person or entity to meet the roads' condition or standard prior to the damage. T.C.A. § 54-7-115.

Local governments may participate with a railroad authority in constructing, reconstructing or repairing railroad crossings. This work may be performed by private parties under contract or by local government employees. T.C.A. § 65-11-101.

The CAO, highway commissioner, legislative body member or road department employee must not be financially interested in or have any personal interest, either directly or indirectly, in the purchase of any supplies, machinery, materials, nor in any firm, corporation, association or individuals selling or furnishing any such materials or equipment to the road department. Violation of this provision constitutes official misconduct and is a Class C misdemeanor and is grounds for removal from office. T.C.A. § 54-7-203. This conflict of interest statute is more restrictive than the statute generally applicable to county officials. T.C.A. § 12-4-101.

The CAO may remove any fence, gate or other obstruction from the roads, bridges and ditches of the county and clean out and clear all fences and ditches along or adjacent to the county roads. Any person who places or maintains an obstacle or obstruction on the right-of-way of a county road and refuses to remove it commits a Class C misdemeanor. T.C.A. § 54-7-201. See also Op. Tenn. Atty Gen. 00-072 (April 17, 2000) for a more detailed discussion of this issue.

Removal From Office and Withholding of State Funds. If any provision of the CUHL is violated, the commissioner may withhold state-aid highway system funds until the deficiency is corrected to the commissioner's satisfaction. T.C.A. § 54-7-204. In addition to any proceeding under T.C.A. Title 8, Chapter 47, the CAO of a county road department may be removed from office in accordance with the provisions of T.C.A. § 54-7-205. If the investigation by the district attorney general and the state attorney general indicates willful misfeasance, malfeasance or nonfeasance by the chief administrative officer, the district attorney general shall proceed, pursuant to T.C.A. Title 8, Chapter 47, to remove the CAO from office, and the officer will be ineligible to seek the office again. T.C.A. § 54-7-205.

County Roads v. Private Roads

All roads in a county are not county roads, as some are private roads, state highways or city streets. Private roads are the most difficult to distinguish from county roads. Private roads are generally: (1) used by only one or a few property owners, such as a driveway; or (2) one where the landowner allows the general public to use, but (a) the road has never been formally accepted by the legislative body as a county road or (b) the landowner has never given the public any rights either express or implied.

A public highway or road is “such a passageway as any and all members of the public have an absolute right to use as distinguished from a permissive privilege of using same.” *Standard Life Ins. Co. v. Hughes*, 315 S.W. 2d 239, 242 (Tenn. 1958). This case provides that a road may become public in one of the following ways:

1. Act of a public authority;
2. Express dedication by the owner;
3. Implied dedication--use and acceptance by the public with the intention of the owner that the use become public; or
4. Adverse use continuing for twenty years, creating a prescriptive right.

Accordingly, unless the public has acquired an absolute right to use the road under one of these methods, any public use is either by permission or license and not by right, and the road remains a private road. *Id.*

County Road List. The statutes do not make a clear distinction between “public” and “county” roads. All county roads are public roads, but not all public roads are county roads. Some public roads are maintained by other governmental entities such as the state or city governments. Some roads not maintained by any governmental entity may be public (the public has a right to traverse) while others are private. The county legislative body is required to annually classify the public roads in the county after receiving the recommendation of the CAO of the county highway department. This classification should be accomplished, or at least the process begun, each January. The process

begins when the CAO submits a listing of all county roads to the county legislative body. This listing must include a summary of all changes from the road listing submitted the previous year. The summary is to provide the road name, date the change was approved by the county legislative body and the reason for the change (including but not limited to, opening, closing, reduction or extension in length, or correction of error). The CAO must also include a recommendation for classifying the roads. T.C.A. § 54-10-103. Roads classified by the county legislative body as public roads to be maintained by the county are listed with a classification according to width. T.C.A. § 54-10-104. This county road list is a public record kept by the county clerk T.C.A. § 54-10-103. The county highway department should also have an up-to-date county road list.

A private road often used by members of the public and a public road that has not been maintained by the county highway department are often difficult to distinguish. Although a court called upon to decide such an issue may apply the tests set forth in the *Hughes* case noted above and decide a road is a public road, the county highway department should simply work on the public roads named on the county road list, to avoid the possibility of working on private roads (except as permitted in limited circumstances described below). The CUHL at T.C.A. § 54-7-202(d) states that the CAO may only use county vehicles, equipment, supplies or road materials for official county road purposes. Therefore, the CAO operates clearly within the authority of the law when county road work is limited to public roads classified on the county road list.

The CUHL does allow work on private roads under very narrow circumstances, such as when the United States Postal Service or the school board or education department requests the provision of a route and turnaround area. Before the county highway department performs any work so requested, the CAO must receive the request in writing from the postal or school officials and must also receive the written permission of the owner of the property proposed to be used as a turnaround area. The highway department (CAO or elected highway commission) and the appropriate postal authority or school board or department of education must determine whether all or part of the cost of the work will be reimbursed to the county highway department prior to commencing work on the project T.C.A. § 54-7-202(g). This provision for the postal service and school board is the only exception to the rule that the county highway department cannot work on private roads.

An up-to-date road list is vital for the protection of the highway officials. With a current road list on file, highway officials will know exactly which roads can be maintained and which roads are illegal to maintain. T.C.A. § 54-10-103.

The highway department should not begin work on a road until it has been officially accepted by the legislative body and added to the county road list. There may be some confusion in counties that have a planning commission because road approval by a planning commission is one step in the acceptance process. However, approval of a plat by the planning commission does not constitute acceptance of a platted road as a county road. T.C.A. § 13-3-405.

The county legislative body must update and maintain the county road list after receiving the CAO's recommendation. The road list is not difficult to compile, and should contain eight factors:

1. Type of road (county or state-aid road);
2. State-aid road description (only for county roads)

- included in the state-aid road system);
- 3. Local name of road;
- 4. Beginning and ending point of road (describe by reference to geographical features);
- 5. Miles (length of road to nearest 1/10 mile);
- 6. Class (classify according to width);
- 7. Right of way width (in feet); and
- 8. Roadbed width (in feet);

T.C.A. §§ 54-10-103, 54-10-104.

Frequently, only a portion of a total road may be accepted as a county road. Accordingly, the beginning and ending points, total miles, and other road list items should refer only to the part of the road that is a county road.

Acceptance and Closing of County Roads. The statutory law regarding acceptance of new county roads and the closure of existing county roads is very confusing and the county attorney should be consulted to determine the proper procedure to follow in the particular county. However, some general observations may be helpful. The relatively new CUHL must be reconciled to the greatest degree possible with the old general law on opening, closing and changing roads found in T.C.A., title 54, chapter 10 as well as other general law such as the general law granting certain powers to regional planning commissions and the state Department of Transportation in some instances.

The state attorney general has opined that in counties under the CUHL, the CAO of the county highway department, or the elected highway commission or board (if a private act grants general control of the county road system to the elected board) in the counties with such an elected board, has general control of the county highway system and this includes approving the acceptance of a new road, changing the route of an existing road or closing an existing county road before such a change may take place. Op. Tenn. Att’y Gen. U89-10 (Jan. 31, 1989). However, this is not the only step involved. The county legislative body must pass on additions or deletions to the classifications of county roads in the county road list after receiving the recommendation of the CAO. T.C.A. § 54-10-103. However, if a road has obtained a public character under the standard in the *Hughes* case, it is doubtful whether the CAO or elected highway board may prevent the county legislative body from adding such a road to the county road list or prevent a court from declaring the road public and part of the county road system. *Hackett v. Smith County*, 807 S.W.2d 695 (Tenn. Ct. App. 1990); *Rogers v. Sain*, 679 S.W.2d 450 (Tenn. Ct. App. 1984).

Once a road is a part of the county road system, a county commission cannot merely rescind its action in accepting a public road, but must follow the statutory procedures for road closures. In arriving at this opinion the state attorney general stated that it is well established that an action can be undone only by following procedures specified by statute, or, if there are none, by an act of “equal dignity” with the method of enactment. Op. Tenn. Att’y Gen. U96-010 (Feb. 8, 1996).

If bonds are issued for construction of county roads or bridges, the approval of the CAO, the county legislative body and the Tennessee Department of Transportation must be obtained. T.C.A. §§ 54-9-139, 54-9-202. Also, the regional planning commission has authority to approve plats of subdivisions

which may contain plans for roads or streets, and the planning commission has power to set standards for such roads or streets in the subdivision. T.C.A. §§ 13-3-401, 13-3-402, 13-3-406. However, the statutes specifically state that the approval of a plat by the regional planning commission shall not be deemed to constitute or effect an acceptance by any county or by the public of the dedication of any road or other ground shown upon a plat. T.C.A. § 13-3-405; *Foley v. Hamilton*, 659 S.W.2d 356, 360 (Tenn. 1983).

The old general law found in T.C.A. Title 54, Chapter 10, Part 2 dealing with petitions to open, change or close public roads must be considered when dealing with certain changes to the county highway system. As stated earlier, this old law must be reconciled to the extent possible with the newer statutes found in the CUHL. For example, before a road is closed adjacent landowners or those controlling the land touched by the proposed road must be notified. T.C.A. § 54-10-202, 54-10-203. Since these changes may involve damages to property owners, a jury of view is provided for to determine if damages exist and to what extent. T.C.A. § 54-10-204. The exact workings of a petition process, jury of view, any necessary hearings and other procedural matters should be worked out with the consultation of the county attorney so as to reconcile the conflicting statutes to the greatest extent possible.

In 1995, the General Assembly enacted an alternative, local option procedure for closing public roads that are not maintained by any other governmental entity. If the county legislative body adopts these alternative measures, the following procedures apply for that county. An application to close a public road is made to the CAO. The CAO gives notice of this application to interested parties (adjacent property owners). The CAO makes a recommendation to the regional planning commission regarding whether or not the road should be closed. The planning commission then provides written notice to affected property owners or newspaper notice of an impending recommendation fourteen days prior to making the commission's recommendation to the county legislative body. After receiving the recommendation of the regional planning commission, with the CAO's recommendation attached, the county legislative body may order closure of the public road by resolution. T.C.A. § 54-10-216.

Eminent Domain. Counties, through the county legislative body, may condemn and take property, buildings, privileges, rights and easements of individuals and private corporations for any county purpose. T.C.A. § 29-17-101. Property owners must be compensated for damages involved in condemnation. The amount of payment may be agreed upon by the parties or determined by a court of law. T.C.A. § 29-17-701. Nevertheless, the amount is determined by ascertaining the fair cash market value of the property or property rights taken and additional incidental damages to the residue of the property. T.C.A. § 29-17-810.

Public Fords, Ferries and Bridges

Counties may supervise fords, ferries and bridges. T.C.A. § 54-11-101 *et seq.* Additionally, counties may issue bonds for the construction of county highways, roads and bridges and pledge up to 50% of the state-aid grant funds derived from the state gasoline tax for the retirement of such bonds. However, state funds used in matching federal funds may not be included in this amount. T.C.A. § 54-9-201. The legislative body may build a bridge or bridges over and across any stream or river running through the county. T.C.A. § 54-11-207. The CAO has the authority to temporarily close

roads or bridges as necessary for new construction or repair. Op. Tenn. Att'y Gen. 81-618 (Dec. 7, 1981).

CHAPTER 12

THE COUNTY DEPARTMENT OF EDUCATION

The Education Improvement Act, which was passed by the General Assembly in 1992, made sweeping changes in the method by which local education programs are funded in Tennessee, as well as changing the organization and administration of them at the local level. Formerly public education in this state was funded according to the Tennessee Foundation Program (TFP), a system which was found unconstitutional because it denied children in small school systems the same opportunities provided to those in the larger and more affluent ones. *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993). The TFP has been replaced with the Basic Education Program (BEP), a funding formula providing increased and more equalized funding among the state's local school systems. T.C.A. § 49-3-351. The BEP was designed to be funded over a five-year time span; full funding by the state occurred with the fiscal year beginning July 1, 1997. T.C.A. § 49-3-354(i).

There are several statutory provisions under the BEP which directly affect the administration of the county school system. The General Assembly has formulated “performance goals” which in essence require each school district to achieve a mean academic performance level (based on standardized tests) greater than or equal to national norms. All schools are also expected to maintain “appropriate levels of school attendance and dropout rates,” as set by the State Board of Education. T.C.A. § 49-1-601. The commissioner, with the approval of the state board, may place on probation any school or school system which does not meet academic, attendance, or dropout goals, and ultimately, if the problems are not remedied, may order the removal of some or all of the local board members as well as the director of schools (superintendent). T.C.A. § 49-1-602.

One of the most significant provisions under this law is the requirement for lower average and maximum class sizes, which are set by statute; four years from the time the BEP became fully funded, waivers from these maximum class sizes will no longer be granted. T.C.A. § 49-1-104. Most counties will need additional school buildings and additional teachers in order to meet these class size requirements. Failure to meet the class size requirements can result in a loss of state funding. T.C.A. § 49-3-314.

On the local level, the management and control of the county schools is the responsibility of the county board of education and the director of schools (superintendent). Under the Education Improvement Act, all counties are required to have a popularly elected board of education. T.C.A. § 49-2-201. A “director of schools,” who is an employee of the local board of education, has taken the place of the former elected office of superintendent of education. T.C.A. § 49-2-301.

The authority of the board of education and the director of schools is subject to state law, rules and regulations adopted by the State Board of Education, and the express powers given the state Commissioner of Education. The county board of education establishes local policies and regulations within the authority given to the board. The director of schools serves as the chief administrative officer to implement board policies and manage the county department of education within the guidelines provided by the state and the county board of education.

Title 49 of *Tennessee Code Annotated* (Volume 9) defines the duties and authority of the above mentioned boards and officials as well as those of the county legislative body and county trustee as they relate to education. In this chapter some of the major areas of the administration of the county education department will be discussed.

The County Board of Education

For all elections held after September 1, 1996, school board members in each county are required to be elected by the people from districts of substantially equal population. T.C.A. § 49-2-201. Board members must be elected to staggered four year terms, and may succeed themselves. Members of special school district boards established by private act are to be elected according to the terms of the act and are to retain the existing term of office, although they must be popularly elected on a staggered term basis. The General Assembly, by private act, may establish the membership of particular school boards at any number not less than three nor more than ten. T.C.A. § 49-2-201.

Members of the board of education must be residents and voters of the county in which they are elected, and, except in a few counties, must possess a high school degree or G.E.D. Members of the county legislative body and other county officials are not eligible for election to the board of education. T.C.A. § 49-2-202(a). Members of the board of education are not eligible for election as teacher or any other paid position under the board. T.C.A. § 49-2-203(a)(1)(D).

Members must attend initial and annual training sessions as prescribed by the State Board of Education. The compensation of the board of education is fixed by the county legislative body. T.C.A. § 49-2-202. Vacancies are filled by the county legislative body until the next election. T.C.A. § 49-2-202(e) and TENN. CONST., art. VII, § 2, as interpreted in *Marion County Board of Commissioners v. Marion County Election Commission*, 594 S.W.2d 681 (Tenn. 1980).

The county board of education must hold regular meetings at least quarterly, although the chair may call special meetings. T.C.A. § 49-2-202. The board is to elect a chair from among its members annually, who countersigns all warrants approved by the board and issued by the director of schools. T.C.A. § 49-2-205. The chair of the school board also serves as chair of the executive committee, composed of the chair and the director of schools, which functions as purchasing agent for the school board unless there is a separate purchasing board or purchasing agent otherwise established by law, and also monitors accounts to see that the budget is not exceeded. T.C.A. § 49-2-206. Effective July 1, 1998, all business coming before the county school board must be passed by a majority of the membership of the school board, and not just a majority of the quorum. T.C.A. § 49-2-202.

There are certain duties listed in the statute which the board of education is required by law to perform. T.C.A. § 49-2-203. Some of the more significant duties are summarized as follows:

- To employ a director of schools under written contract of up to four years duration, which may be renewed. This director may be referred to as “superintendent” and replaces the former county superintendent of schools. The school board is the sole authority in appointing a director of schools. (A statutory transition period similar to that provided for election of the school board allowed the legislative body to continue the old method of

selecting a superintendent, which in most cases was by popular election, but the transition period expired on September 1, 1996.)

- Upon the recommendation of the director of schools, to elect teachers who have attained or who are eligible for tenure, to fix their salaries, and to make contracts with them.
- To manage and control all public schools under its jurisdiction.
- To purchase all supplies, furniture, fixtures, and materials of every kind through the executive committee. Expenditures over \$5,000 must be publicly advertised and competitively bid (construction contracts over \$10,000 must be competitively bid).
- To dismiss teachers, principals, supervisors and other employees upon sufficient proof of improper conduct, inefficient service or neglect of duty. Such employees must be given written notice and an opportunity to make their defense.
- To suspend or dismiss pupils when the progress or efficiency of the school makes it necessary.
- To require the director of schools and the chair of the local board to prepare a budget on forms furnished by the Commissioner of Education, and when the budget has been approved by the local board to submit it to the county legislative body. No school budget may be submitted to the legislative body that directly or indirectly supplants or proposes to use state funds to supplant any local current operation funds, excluding capital outlay and debt service.
- To develop and implement an evaluation plan for all certified employees in accordance with the guidelines and criteria of the State Board of Education, and submit such plan to the Commissioner of Education for approval.
- Such other duties as are required by law.

In addition to the duties specifically required in T.C.A. § 49-2-203, the local board is given certain *discretionary powers*. These are things the board is empowered, but not required, to do. Briefly summarized, these discretionary powers are as follows:

- To consolidate schools under their jurisdiction.
- To require school children and employees to submit to a physical examination by a competent physician under certain circumstances.
- To establish night or part time schools.
- To permit school buildings and property to be used for public, community or recreational purposes, subject to rules and regulations adopted by the board.
- To employ legal counsel.
- To make rules providing for school safety patrols.
- To establish minimum attendance requirements or standards as a condition for passing a course or grade.
- To provide written notice to probationary teachers of specific reasons for failure of reelection and provide a hearing to determine the validity of the reasons, upon request.
- To offer and pay monetary incentives to encourage the retirement of any teacher or other employee who is eligible to retire.
- To lease or sell unused buildings and property to any governmental entity, civic group or community organization, if such a transaction is in the best interest of the school system and the community; otherwise public school buildings and property may not be used for private benefit.

- To establish and operate before and after school care programs in connection with any schools, before and after the regular school day and while school is not in session.

The board of education is empowered to exercise the right of eminent domain for public school purposes. T.C.A. § 49-2-2001. The board has the power to purchase land and to erect and equip buildings for public schools, and the board holds title to property so acquired. The board has the power to dispose of real property to which it has title in accordance with T.C.A. § 49-6-2006. Personal property which has become surplus is required to be sold by the board in accordance with T.C.A. § 49-6-2007. The board is permitted to transfer surplus real or personal property to the county or to any municipality within the county for public use, without the requirement of competitive bidding or sale. T.C.A. §§ 49-6-2006 and -2007. The board of education is not authorized to donate surplus real or personal property to charitable or non-profit organizations; the board may, however, sell or lease surplus property to such organizations. T.C.A. §§ 49-2-203(b)(10)(A), 49-6-2006, 49-6-2007; Op. Tenn. Att'y Gen. 96-046 (March 14, 1996). Public school buildings and property may not be used for private benefit. T.C.A. §§ 49-2-203(b)(10)(A).

The board of education is authorized to receive donations of money, property or securities from any source for the benefit of the public schools, which the board is to disburse in good faith in accordance with the conditions of those gifts. T.C.A. 49-6-2006.

The authority of the county board of education is limited by the rules and regulations of the State Board of Education as enforced by the commissioner of education. It is the duty of the state board to prescribe rules and regulations for all public schools, kindergarten through the twelfth grade, to prescribe curricula, and to approve courses of study adopted by local boards of education. T.C.A. § 49-1-302. The state regulations extend to such matters as personnel evaluation, classroom size, pupil-teacher ratios, building suitability and other matters that directly impact the budget process.

Director of Schools

As of July 1, 1992, the office of county superintendent of public instruction was abolished, and in its place is the director of schools (who may also be referred to as “superintendent”), who is appointed by the local board of education and is considered an employee of the board. T.C.A. § 49-2-301. However, the legislature authorized counties to continue the former practice of popular election or appointment until September 1, 1996, and any superintendent who was in office as of July 1, 1992, was allowed to serve the remainder of his or her term. T.C.A. § 49-2-301.

School superintendents who were elected by the people or appointed by the county legislative body were required to have (1) a teacher's license with a principal and/or supervisor endorsement, (2) a master's degree in educational administration, and (3) five years' teaching and administrative experience. T.C.A. §§ 49-2-301(a)(2), 49-2-301(i). A director of schools who is appointed by the local board of education is required only to have a baccalaureate degree. T.C.A. § 49-2-301(i).

The numerous duties of this position are described in T.C.A. § 49-2-301 and are summarized in part below:

- Insure that laws relating to education are faithfully executed.
- Attend all meetings of the school board and serve on its executive committee.
- Keep records of meetings, actions, and financial transactions of the school board.
- Issue, within ten days, all warrants authorized by the board.
- Make recommendations to the board, although the director of schools may not vote.
- Supervise and visit the schools.
- Enforce the regulations of the commissioner of education regarding courses of study and systems of pupil promotion.
- Sign certificates and diplomas.
- Recommend teachers eligible for tenure to the school board.
- Recommend salaries for teachers.
- Employ school principals (T.C.A. § 49-2-303).
- Assign teachers and educational assistants to specific schools.
- Keep on file all teachers' licenses and contracts of teachers and other employees.
- Prepare and submit attendance reports.
- Prepare full quarterly financial reports and monitor school spending.
- Prepare and submit a school budget.
- File a copy of the approved school budget with the Commissioner of Education within ten days after its adoption by the county legislative body.
- Furnish a list of teachers and salaries to Commissioner of Education.
- Approve access to personnel files when necessary.
- Employ, transfer, suspend, non-renew and dismiss all personnel within the approved budget and applicable statutes and board policies, rules and regulations, contracts and negotiated agreements.
- Submit a report to the General Assembly by January 1 each year relative to the number of students in alternative schools.

Director of schools is a full time position; it is a misdemeanor for the director to enter into any other contract with the board of education, to take any additional compensation from it, or to act as principal or teacher in any school. A director who violates this provision must also be dismissed from the position. T.C.A. § 49-2-301(g).

The County School Budget

The budget for the county school system is developed by the director of schools and board chair and presented to the full board for its consideration. When the school budget has been approved by the board, it must be submitted to the county legislative body not later than forty-five days prior to the July meeting of the county legislative body or forty-five days prior to the actual date the budget is to be adopted, if such adoption is scheduled prior to July 1. T.C.A. § 49-2-203(a)(11). Local option budgeting laws and private acts which may be in effect in a particular county will affect the budgeting process and must be consulted.

Under most circumstances, the legislative body either accepts the school budget as submitted by the school board or rejects it, in which case the budget is sent back to the school board with a specified amount of total funding. The school board then revises the specific items to conform with the total appropriated amount. However, the County Financial Management System of 1981, codified in

T.C.A. § 5-21-101 *et seq.*, seems to indicate that the county legislative body, in those counties which have adopted the act, may amend the budget proposed by the board of education and adopt a school budget without further action by the board of education. T.C.A. § 5-21-111. In spite of the statutory language, the state court of appeals has found that the county legislative body has no authority under the 1981 act to revise line items in the school budget, but may decrease the overall amount. *Morgan County Board of Commissioners v. Morgan County Board of Education*, No. 03A01-9308-CV-00290, 1994 WL 111457 (Tenn. Ct. App. April 6, 1994). A more recently-enacted law, the Local Option Budgeting Law of 1993, T.C.A. § 5-12-201 *et seq.*, contains provisions which do allow the county legislative body to revise the school budget under specified circumstances, but this law only applies in counties that have adopted its provisions. Regardless of the procedure used to adopt the budget, once a school budget has passed, any amendment must be approved by the school board. T.C.A. § 5-9-407.

Of particular interest to local governments is the statutory limitation which prohibits local school boards from submitting a budget which reduces local educational funds, excluding capital outlay and debt service, and then replaces them with money from the state. (This is commonly known as the “maintenance of effort” requirement or the “supplanting test.”) There are two exceptions to this rule. First, if state funds are reduced from the 1990-1991 level or are subsequently reduced, then local funds used to offset these funding reductions are not subject to the maintenance of local funding requirement. Second, this restriction does not apply for three years after a city and county system have consolidated into one. T.C.A. §§ 49-2-203(a)(11), 49-3-314(c)(3).

If the county legislative body has not adopted a budget for the operation of the public schools by July 1 of any year, the school budget for the year just ended continues in effect until a new school budget has been approved. Any continuing budget (the previous year's budget as temporary authority to expend funds until new annual budget is adopted) is not valid beyond October 1 of the current fiscal year for purposes of the local education agency's ability to receive state funds. T.C.A. § 49-3-316(d). Therefore, if a budget has not been adopted by October 1, the state may discontinue the county's funding.

A local school board may choose to accept transfers of students from outside their school systems. T.C.A. § 49-6-3104. The receiving system may charge tuition in an amount equal to the total funds actually raised and used for school purposes by the board, divided by the number of pupils in average daily attendance during the preceding school year. T.C.A. § 49-6-3003. State school funds follow the transfer student into the receiving school system. The approval of the school system from which the student is transferring is not necessary if the transfer occurs at least two weeks prior to the beginning of the school year; if the transfer occurs within two weeks of the beginning of the school year or during the year, the approval of both the sending and receiving school systems are required. T.C.A. § 49-6-3104.

State Funds for Education

As mentioned earlier, the method for allocating state funding for local education programs is the Basic Education Program (BEP), which reached full funding by the state during the school year beginning on July 1, 1997. Although the Tennessee Foundation Program (TFP) has not been repealed (see T.C.A. § 49-3-306), its sole function under the current system has been to provide a base level

from which to allocate funds until full funding levels were reached. T.C.A. § 49-3-354. The statutory purpose of the BEP is “to provide funding on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenues.” T.C.A. § 49-3-356.

Under the BEP, state funds are allocated according to a formula devised by the state board of education, and calculated for each local education agency on the basis of prior year average daily membership (ADM), or full-time equivalent average daily membership (FTEADM), or identified and served special education (I&S), as appropriate. T.C.A. § 49-3-351. The state provides 75% of the funds generated by the BEP formula in classroom components and 50% in non-classroom components, as these are defined by the State Board of Education, while the remaining funds must be provided locally. From these revenues, the state will distribute funds “for equalization purposes,” based on the formula adopted by the State Board of Education. Because of this equalization, the actual percentage paid by the state for classroom and non-classroom components in each school system will vary. The local government is statutorily required to fund its share; the fall school term may not begin until the local portion has been included in the budget approved by the local legislative body. T.C.A. § 49-3-356.

Reference Material on County Departments of Education

The material included in this handbook is intended only as an overview of the educational system at the county level, a complex and extensive area of the law. The reader is referred to the following publications for additional information:

1. *Tennessee Code Annotated*, Volume 9, Title 49.
2. *Rules, Regulations, and Minimum Standards of the State Board of Education* - available from the Commissioner of Education, 100 Cordell Hull Building, Nashville, Tennessee 37219 or the local director of schools's office.
3. *Annual Statistical Report of the Department of Education* - published by the State department of education from information provided by the local director of schools. A copy may be obtained from the Commissioner of Education at the above address or at the office of the local director of schools.

CHAPTER 13

PERSONNEL MATTERS

Personnel Policies

Various state statutes grant county officials and department heads authority over personnel matters within their offices or departments. Some examples of statutes which grant personnel authority include the County Uniform Highway Law, which provides that the chief administrative officer of the highway department has control of personnel policies for highway department employees. T.C.A. § 54-7-109. In counties that have adopted the sheriff's civil service law, the civil service commission establishes personnel policies for the sheriff's department, but the sheriff can hire and fire employees pursuant to the personnel policies as established. T.C.A. § 8-8-401 *et seq.* The county board of education is responsible for establishing personnel policies and is responsible for personnel matters within the department of education. T.C.A. §§ 49-2-203, 49-2-209. Other examples of the authority of county officials with respect to deputies and assistants is discussed in the section entitled "Deputies and Assistants" below.

Because the legislature has placed authority over personnel with various individual officeholders, the county legislative body cannot adopt personnel policies and apply them to all county offices and departments without the agreement of the affected county officials. An exception to this rule has been found by the courts to exist in the largest counties in Tennessee, such as Shelby and Knox which have centralized personnel management authorized by private act, and Davidson which has centralized personnel management by metropolitan charter. *See Shelby County Civil Service Merit Board v. Lively*, 692 S.W.2d 15 (Tenn. 1985); *see also Knox County v. Knox County Personnel Board*, 753 S.W.2d 357 (Tenn. Ct. App. 1988); *Bush v. Employee Benefit Board of Metro. Gov't*, 792 S.W.2d 932 (Tenn. Ct. App. 1990).

The CTAS publication entitled *Personnel Policies and the Fair Labor Standards Act* (1998) may be useful to any county official who wants to establish personnel policies. This publication contains a general discussion of topics which should be addressed when preparing personnel policies, together with sample policies.

Required Basic Personnel Policies

A state law which became effective on July 1, 1997, requires written personnel policies covering four basic topics for all employees of county government (except those in Davidson, Moore or Shelby County). T.C.A. § 5-23-101 *et seq.* The four topics are: (1) leave, (2) wage and hour, (3) non-discrimination and sexual harassment, and (4) drug and alcohol testing (only for employees required by law to be tested). T.C.A. § 5-23-104.

Under this law, all "county officials" (defined as county trustees, registers of deeds, county clerks, judges who employ county employees, clerks of court, sheriffs, assessors, boards of education, and chief administrative officers of highway or public works departments) are required to have written personnel policies on the four topics specified in the act to govern the employees of their respective

offices or departments. These policies are required to be reviewed by an attorney and then submitted to the county legislative body to be included in the minutes and filed in the office of the county clerk. The county legislative body does not approve these policies. T.C.A. 5-23-103.

For all other county employees, and for the employees of any county officials who choose not to have separate policies, the county legislative body and the county executive are jointly responsible for the preparation of personnel policies on the four topics mentioned above. The policies will be prepared by one person or a group, appointed by the county executive with confirmation by the county legislative body. The policies must be reviewed by an attorney and approved by the county legislative body, and they must be included in the minutes and filed in the office of the county clerk. T.C.A. § 5-23-103.

Officials and department heads are responsible for distributing copies of the policies to all employees under their direction (with special provisions for boards of education), including a statement that the policies do not affect the employment-at-will status of employees or create a contract of employment, and for having each employee sign an acknowledgment form. These officials and department heads are also responsible for furnishing a copy of T.C.A. § 39-16-504 to each employee, maintaining required personnel records, and ensuring that all required notifications are given to the employees under their direction. T.C.A. § 5-23-107.

Officials and employees whose intentional and knowing illegal acts or omissions in connection with the requirements of this act result in liability for the county which is not covered by insurance may be required to reimburse the county for such liability. T.C.A. § 5-23-109.

For additional information relative to this law and its implementation, please see CTAS Technical Report 97-3 entitled *County Personnel Policies — 1997 Public Chapter 361* (June 1997).

Deputies and Assistants

As a general rule, each county official is responsible for hiring any deputies and assistants who may be necessary for his or her particular office. The county executive has the sole authority to hire secretaries and assistants where necessary to properly and efficiently transact the business of that office under T.C.A. § 5-6-116, so long as sufficient funds have been appropriated for this purpose. The chief administrative officer of the county highway department has the sole authority to hire assistants under T.C.A. § 54-7-109. County fee officials (which include clerk and masters, clerks of court, county clerks, trustees, registers of deeds, and sheriffs) are authorized to hire deputies and assistants as necessary to properly conduct the business of their respective offices as discussed below.

The number and compensation of deputies and assistants for fee officials may be determined either by a letter of agreement or by a court order under T.C.A. § 8-20-101. If the fee official agrees with the amount budgeted by the county legislative body for deputies and assistants for their office, the official and the county executive may enter into a letter of agreement. The county legislative body is prohibited from reducing the amount budgeted for sheriff's department employees below current levels without the consent of the sheriff under T.C.A. § 8-20-120, but this prohibition does not apply to other offices. Any fee official who does not agree with the budgeted amount must obtain a court order for additional funding by filing a lawsuit as outlined below.

Court orders for deputies and assistants are obtained by filing a petition with the appropriate court setting out the necessity for deputies and assistants, the number required, and the salary that should be paid to each. T.C.A. § 8-20-101. The county executive is named as the defendant in the petition. The county executive is required to file an answer within five days after service of the petition, either agreeing with or denying the matters stated in the petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants. T.C.A. § 8-20-102. The county legislative body cannot refuse to fund the salaries ordered by the court.

The courts in which the petitions are to be filed are set out in T.C.A. § 8-21-101, as follows:

1. Clerks of the circuit, criminal and special courts file their petitions with one of the judges of their respective courts (but upon request of any party the case must be transferred to a court other than the one the clerk serves);
2. The sheriff files his or her petition with the criminal court, if there is one in the county, and otherwise with the circuit court; and,
3. Clerks and masters, trustees, county clerks, probate court clerks and registers file their petitions with one of the chancellors.

Although court orders setting the number and compensation of deputies and assistants can be modified under T.C.A. § 8-20-104, no court order increasing expenditures will be effective for any fiscal year unless the petition was filed within thirty days after final adoption of the budget for that fiscal year. However, a new officer has thirty days from taking office within which to file a petition. T.C.A. § 8-20-101(b). The number and/or compensation of deputies and assistants can be decreased at any time by the official without the necessity of filing a petition. T.C.A. § 8-20-104. The county executive may request that the court decrease the number and/or compensation of deputies and assistants under T.C.A. § 8-20-105. Either party may appeal the court's decision. T.C.A. § 8-20-106. The costs of all cases are paid out of the fees collected by the respective offices. T.C.A. § 8-20-107.

If the county official agrees with amounts which are set forth in the budget adopted by the county legislative body, a court order is not necessary. Instead of filing a petition, the official can enter into a letter of agreement with the county executive, using a form prepared by the state comptroller. The letter of agreement is filed with the same court in which a petition would have been filed, but no litigation taxes, court costs or attorneys fees can be charged in connection with the filing of the letter of agreement. T.C.A. § 8-20-101(c).

Courthouse Hours and Office Space

The county legislative body has no statutory authority to establish uniform courthouse hours and require the other officials to remain open or closed during these scheduled hours. However, elected officials cannot neglect the business of the office without being subject to removal from office in an ouster suit. T.C.A. § 8-47-101. Therefore, each official is under a duty to maintain office hours which will allow the public reasonable access to the offices and allow the work of the office to be

performed in a timely and efficient manner. Each official can decide whether to remain open on holidays. T.C.A. § 15-1-101. The county legislative body has the authority to assign office space within the courthouse. *See Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit*, 579 S.W.2d 875 (Tenn. Ct. App. 1978).

Residence

Counties can require all new employees hired after a certain date to be residents of the county. However, counties cannot dismiss or penalize its current employees solely on the basis of nonresidence in the county. Op. Tenn. Att’y Gen. U91-137 (Nov. 19, 1991); Op. Tenn. Att’y Gen. U91-138 (Nov. 19, 1991); T.C.A. § 8-50-107.

Voting Leave

Any employee entitled to vote in an election held in this state may take a reasonable time (not over three hours) off from work on election day to vote. T.C.A. § 2-1-106. If the polls are open for more than three hours before or after the employee's shift begins or ends, the employee is not entitled to take time off to vote. If time off must be given, the employee is required to give the employer notice by noon on the day before the election and the employer can specify the voting hours. T.C.A. § 2-1-106.

It is unlawful to coerce or direct an employee to vote or not vote for a candidate or measure, or to vote for any candidate, or to circulate any statement or report intended to coerce or intimidate an employee to vote in a particular way, or to discipline or discharge an employee for the way he or she votes. T.C.A. § 2-19-134.

Jury Duty

All federal and state officeholders have a limited exemption from jury duty. The limited exemption means that the officeholder is not required to serve on the dates indicated on the summons, but must designate a seven-day period when he or she will be available to serve within the next twelve-month period after the date of the summons. Upon receipt of the summons, the officeholder must notify the clerk of the court issuing the summons of the seven-day period the officeholder will be available to serve. The officeholder will only be required to serve on one jury during the seven-day period. T.C.A. § 22-1-203.

Employees of officeholders are not exempt from jury duty. Upon receiving a summons to report for jury duty, an employee must present the summons to the supervisor on the next day he or she is working. The employee must be excused from work for the entire day or days the employee is required to serve as a juror, except that the employee can be required to return to work on days when the employee is required to serve less than three hours. The employee is entitled to his or her usual compensation, less the amount of fee or compensation received for serving as a juror (of course, the employer may pay the employee the usual compensation without deducting the juror fee). The employer is not required to compensate an employee for more time than was actually spent serving and traveling to and from jury duty. These provisions do not apply to any employee who has been

employed on a temporary basis less than six months, and special rules apply to night-shift employees. T.C.A. § 22-4-108.

Employers are prohibited from discharging or discriminating against an employee for serving on jury duty if the employee, prior to taking time off, has given the required notice. Any employee who is discharged, demoted, or suspended for having taken time off to serve on jury duty is entitled to reinstatement and reimbursement for lost wages and work benefits. T.C.A. § 22-4-108.

Maternity Leave

Tennessee's maternity leave statute, T.C.A. § 4-21-408, applies to all employers who employ 100 or more full-time employees at a job site or location. Female employees who have been employed at least twelve months are allowed up to four months off for pregnancy, childbirth and nursing the infant. The employee must give at least three months advance notice to her employer of her anticipated date of departure for maternity leave, except in cases of medical emergency which necessitates that leave begin earlier than originally anticipated. The notice must state the length of maternity leave and the employee's intention to return to full-time employment after maternity leave. The leave may be with or without pay. The employee must be reinstated to the same or a similar position with no reduction in vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which she was eligible at the date of her leave, and any other benefits or rights of her employment incident to her position. However, the employer need not pay the cost of any benefits, plans or programs during the period of maternity leave except to the extent that the employer pays for such benefits for all employees on leave of absence. If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer will not be liable for failure to reinstate the employee at the end of her maternity leave period. The law requires that the provisions of the act be included in the next employee handbook published by the employer after January 1, 1988. The state law applies only to female employees, and does not include adoption or foster care.

The federal Pregnancy Discrimination Act (PDA) amendment to the Civil Rights Act of 1964, 42 U.S.C. § 2000e(k), prohibits employment discrimination against women on the basis of pregnancy, childbirth or related medical conditions. This means that pregnancy-related conditions must be treated the same as any other temporary medical incapacity. The PDA applies to employers who have fifteen or more employees. The term "employees" includes local government employees, but does not include elected officials and their personal staff or policy-making appointees. The Tennessee Attorney General has opined that Tennessee's maternity leave statute does not conflict with the PDA. Op. Tenn. Att'y Gen. 91-22 (March 12, 1991).

The federal Family and Medical Leave Act (FMLA), 29 U.S.C. § 2654, provides that both male and female employees who have worked at least twelve months for the employer and who have worked at least 1,250 hours during the preceding twelve-month period are eligible for up to twelve workweeks of unpaid leave in connection with the birth of a child or placement of a child for adoption or foster care. The employee must give at least thirty days advance notice of the need for leave, except in cases of emergency. The leave must be concluded within the twelve-month period beginning with the date of birth or placement of the child. The employee must be reinstated to the same or an equivalent position with no loss of accrued benefits. Leave can be requested prior to the

birth or placement under certain circumstances such as visits to the doctor and other prenatal care, and for counseling, court appearances and the like when required for adoption or foster care. If both the husband and wife are employed by the county government and both want to take FMLA leave for the birth or placement of a child, they are limited to a combined total of twelve workweeks. For additional information about this act, consult the joint CTAS/MTAS publication entitled *The Family and Medical Leave Act - A Guide for Local Governments* (1993).

Military Leave

All county officials and employees who are in any reserve component of the armed forces of the United States, including members of the Tennessee Army and Air National Guard, are entitled to leave of absence from their duties without loss of time, pay, regular leave or vacation, impairment of efficiency rating, or any other rights or benefits to which otherwise entitled, for all periods of military service. The official or employee is entitled to compensation for a period not exceeding fifteen working days per year, plus any additional days which may result from call to active state duty. T.C.A. § 8-33-109.

The Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, establishes minimum wage, overtime pay, recordkeeping, and child labor standards for millions of workers in the private sector and in federal, state, and local governments, including counties. Special rules apply to state and local governments in fire protection and law enforcement activities, volunteer services, and compensatory time off in lieu of cash overtime pay. This publication contains only a general overview of selected topics under the FLSA. For a detailed discussion of the requirements of the act, consult the CTAS publication entitled *Personnel Policies and the Fair Labor Standards Act* (1998).

Almost as important as what the FLSA requires is what the act does not require. The FLSA does not require vacation, holiday, severance or sick pay. The act does not require meal or rest periods, or holidays off, or vacation time off, and it does not limit the number of hours an employee over sixteen years of age may work. (State law regulates the hours that minors can work. *See* T.C.A. § 50-5-105.) The FLSA does not require premium pay for weekend or holiday work, nor does it require pay raises or fringe benefits, or discharge notices, reasons for discharge, or immediate payment of final wages. Although the FLSA does not require it, employers are required by state law to inform employees of the amount they will be paid before they are hired. T.C.A. § 50-2-101.

Exemptions. There are certain persons who are not covered by the provisions of the FLSA. These “non-covered employees” include elected officials and their personal staffs, policy-making appointees and legal advisors who are not covered by civil service laws. Non-covered employees also include bona fide volunteers (not otherwise employed by the county in a similar capacity), true independent contractors, prisoners (while working for the government), and certain trainees. These exclusions are narrowly defined and the rules are strictly applied.

There are also employees who are exempt from the minimum wage and overtime provisions of the act. These “exempt employees” include: (1) “white collar” exemptions, including executive, administrative or professional employees, the requirements for which are outlined in detail in the

federal regulations; (2) seasonal employees as defined in the regulations; and (3) public safety employees where there are fewer than five full time or part time law enforcement officers or firefighters. The payment of a salary rather than an hourly wage is not determinative of whether an employee is exempt from the provisions of the FLSA. All requirements of the federal regulations must be met before an exemption will apply.

Compensable Hours. Compensable hours of work include all times during which the employee is on duty or on the employer's premises available for work or time spent away from the employer's premises under conditions which prevent the employee from using the time for personal activities. Work not requested or required by the employer but allowed or permitted is work time under the FLSA, even if performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that work is being performed, the work must be counted as hours worked.

Generally, periods during which an employee is completely relieved from duty and which are long enough to enable the employee to use the time effectively for his or her own purposes are not hours worked. Rest periods of short duration, running from five minutes to about twenty minutes, must be counted as hours worked. Meal periods of at least thirty minutes or more, where an employee is completely relieved from duty, are not a part of hours worked. It is not necessary that an employee be permitted to leave the premises during a meal period so long as he or she is otherwise completely freed from duties. Whether waiting time is time worked under the FLSA depends upon the particular circumstances. Waiting time and sleeping time are specifically addressed in the federal regulations.

Minimum Wage. Effective September 1, 1997, covered nonexempt workers are entitled to a minimum wage of \$5.15 an hour. Wages are due on the regular payday for the pay period covered. Deductions made from wages for items such as cash or merchandise shortages, employer-required uniforms, and tools of the trade are illegal if they reduce the employees' wages below the minimum rate or reduce the amount of overtime pay.

Overtime. The FLSA generally requires overtime compensation for hours worked over forty in a workweek (a consecutive seven-day period). After forty hours of work are completed in a workweek, an employee must receive overtime pay at a rate of not less than one and one-half times the regular rate of pay. This requirement may not be waived by agreement between the employer and employee. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, will not limit the employer's liability for the overtime work which the employer "suffers or permits". Regulations detail how to calculate the "time and one-half" amount as applied to an employee's "regular rate of pay" which generally is to be used as the basis for overtime compensation.

The FLSA establishes a somewhat complicated procedure which allows the establishment of longer work periods than seven day workweeks for public safety employees of state and local governments. Public safety personnel includes employees engaged in firefighting and law enforcement activities. The term may also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection or law enforcement activities. These provisions do not apply in cases in which public safety services are provided to the city or county under a contract with a private organization.

Compensatory (“Comp”) Time. Employees of a county may receive compensatory time off in lieu of overtime compensation pursuant to an agreement or understanding with the employee. Like overtime pay, compensatory time accrues at the rate of one and one-half hours for each hour of overtime worked. The employer can use a combination of comp time and wages so long as the time-and-a-half requirement is met.

There are limits to the amount of compensatory time which may accrue. If the work for which compensatory time is provided is a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue up to 480 hours of compensatory time. For any other work, the employee may accrue up to 240 hours of compensatory time. After the maximum number of hours has accrued, the employee must be paid overtime compensation. Compensation for accrued comp time must be paid at the regular rate earned by the employee at the time of the payment. An employee who has accrued comp time upon termination of employment must be paid the greater of the average regular rate the employee received during the last three years, or the final regular rate of pay received by the employee.

When an employee requests the use of accrued comp time, the use must be permitted within a reasonable period after the request as long as the operations of the employer are not unduly disrupted.

Recordkeeping Requirements. Employers must keep records of wages, hours, and other items as specified in U. S. Department of Labor recordkeeping regulations. This type of information is usually maintained by employers in the ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in a certain form and time clocks do not have to be used. If an employee is subject to both minimum wage and overtime pay provisions, the following records must be kept: (1) personal information, including employee's name, home address, occupation, sex, and birth date (if under nineteen years of age); (2) hour and day workweek begins; (3) total hours worked each workday and each workweek; (4) total daily or weekly straight-time earnings; (5) regular hourly pay rate for any week when overtime is worked; (6) total overtime pay for the workweek; (7) deductions from or additions to wages; (8) total wages paid each pay period; and (9) date of payment and pay period covered.

Recordkeeping requirements for exempt employees differ slightly from those for nonexempt workers. Special information is required for employees working under uncommon pay arrangements, employees to whom lodging or other facilities are furnished, and employees receiving remedial education. Employers are not required to keep records for non-covered employees. Each county official responsible for personnel and payroll records should check to ascertain that all the information required is contained in the records.

Enforcement and Penalties. Employers who willfully violate the minimum wage or overtime provisions of FLSA may be fined up to \$10,000 and if the employer has been convicted on a prior occasion he or she may also be imprisoned up to six months. Also, when an employee sues for violation of the minimum wage or overtime provisions, the employer may have to pay the unpaid minimum wage or overtime, as well as an equal amount for liquidated damages, attorneys' fees, costs, and other relief, such as promotions and reinstatement. The U. S. Department of Labor may also initiate action against an employer.

Equal Pay Provisions. The Equal Pay Act, 29 U.S.C. § 206(d), was enacted as an amendment to the Fair Labor Standards Act. The equal pay provisions apply to all employees, even those who are exempt from the minimum wage and overtime provisions of the FLSA. Gender based wage differentials between men and women employed in the same establishment, on jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions, are prohibited. These provisions, and other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. For similar state law, see T.C.A. § 50-2-202.

Complete information regarding the Fair Labor Standards Act is available from the United States Department of Labor. Additionally, the CTAS publication entitled *Personnel Policies and the Fair Labor Standards Act* (19982) contains detailed information regarding the requirements of the FLSA.

Family and Medical Leave Act

Under the federal Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2654, eligible county employees are entitled to up to twelve workweeks of unpaid leave during a twelve month period for the birth of a child, the placement of a child for adoption or foster care, a serious health condition of the employee that makes the employee unable to perform the functions of his or her job, or the serious health condition of a spouse, son, daughter or parent which requires the employee's presence.

Eligible employees are those who have been employed by the county for at least twelve months, and who have worked at least 1,250 hours during the immediately preceding twelve-month period. The term “employee” as used in the FMLA has the same meaning as under the FLSA, so persons who are covered by the FLSA (even if they are “exempt”) are covered by the FMLA. Persons who are not covered include elected officials, political appointees, volunteers and independent contractors.

Subject to certain conditions, accrued paid leave may be substituted for unpaid FMLA leave. Ordinarily, an employee must provide at least thirty days advance notice of the need to take FMLA leave. Medical certification also may be required. Special rules apply for husband and wife employed by the same employer, for highly compensated employees, and for local educational agencies. Upon returning from FMLA leave, the employee must be reinstated to the same or an equivalent position with no loss of accrued benefits.

For a more complete understanding of the FMLA, consult the joint CTAS/MTAS publication entitled *The Family and Medical Leave Act - A Guide for Local Governments* (1993), and the federal regulations at 29 C.F.R. part 825.

Americans with Disabilities Act

The federal Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against persons with disabilities in employment under Title I, and mandates their full participation in services and activities offered by local governments under Title II.

Title I of the ADA prohibits employers from discriminating against a qualified individual with a disability in all aspects of employment, including job applications, hiring, advancement, discharge,

compensation, training and any other terms, conditions or privileges of employment. Local governments must make reasonable accommodations for known physical or mental limitations of an otherwise qualified individual unless to do so would result in an undue hardship. A local government cannot exclude persons with disabilities from job opportunities unless they are unable to perform the essential functions of the job with reasonable accommodations. The employer cannot prefer or select a qualified person without a disability over an equally qualified person with a disability merely because the disabled person will require an accommodation.

The basic rule of Title II of the ADA is that no person is to be excluded from participation in or denied the benefits of the programs, services or activities of local governments on the basis of a disability, nor be subjected to discrimination by local governments. Government services and activities covered under Title II include education, highways and roads, law enforcement, parks, courts, personnel, voting, taxpaying, deed recording, motor vehicle registration, public meetings and public transportation.

Counties are required to appoint an ADA Coordinator, conduct a self-evaluation, adopt grievance procedures, and adopt a three-year transition plan for structural changes. There are detailed accessibility guidelines and deadlines for compliance which must be followed. For a more complete understanding of the ADA, consult the joint CTAS/MTAS publication entitled *A Look at the Americans with Disabilities Act - A Guide to Compliance for Tennessee Local Governments* (1992).

Equal Employment Opportunity

In addition to the Americans with Disabilities Act and Equal Pay Act, both discussed above, various state and federal laws prohibit discrimination in employment matters including hiring, firing, promotion, compensation, terms, conditions and privileges of employment. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex or national origin. The Tennessee Human Rights Act, T.C.A. § 4-21-101 *et seq.*, contains similar provisions. State law prohibits discrimination by counties in the hiring, firing and other terms and conditions of employment against any applicant for employment based solely upon any physical, mental or visual handicap of the applicant, unless such handicap to some degree prevents the applicant from performing the duties required by the employment sought or impairs the performance of the work involved. Discrimination against blind persons in any employment practices because of the use of a guide dog is also prohibited. T.C.A. § 8-50-103. As a result of a 1990 amendment which deleted T.C.A. § 8-50-103(c), persons with AIDS, tuberculosis, and other contagious diseases are no longer excluded from the prohibition against employment discrimination. Discrimination in employment against individuals who are over the age of forty solely on the basis of their age is prohibited by T.C.A. § 4-21-407. *See also* 29 U.S.C. § 621 *et seq.*

Employees who have been victims of illegal discrimination may be entitled to reinstatement, back pay, compensatory damages, punitive damages, and attorneys' fees. For additional information on this subject, consult the CTAS publication entitled *Personnel Policies and the Fair Labor Standards Act* (1998).

Miscellaneous Personnel Matters

Insurance. Two sets of statutes coexist which authorize counties to provide group insurance for county employees. Under T.C.A. §§ 8-27-401 through 8-27-403, the county legislative body is authorized to provide group life, hospitalization, disability and medical insurance for county employees, and to provide for payment by the county of a portion of the premiums. The county legislative body is authorized to include retired county employees, officials, and their surviving spouses. The county legislative body approves the insurance contracts by majority vote.

Counties are also authorized to provide group life, hospitalization, disability and medical insurance under T.C.A. § 8-27-501 *et seq.* Under this set of statutes, all county employees and county officials have the option of electing the coverage, and the county is authorized to pay all or any portion of the premiums with the remainder to be deducted from the employees' salaries. The county legislative body is authorized to include retired county employees, officials, and their surviving spouses. A county insurance fund must be established for deposits of the county's share of the premiums as well as the payroll deductions. Once established, the insurance program cannot be discontinued except by two-thirds vote of the county legislative body and after three months notice to officials and employees.

On the state level, a local government insurance committee was created by the legislature in 1989 to establish a health insurance plan for employees of local governments and certain quasi-governmental organizations, with all costs of the plan to be paid by the participating local governments and eligible quasi-governmental organizations. The staff of the state group insurance program is to act as the staff of this program. T.C.A. § 8-27-207.

A state supported local education employee group insurance program is established under T.C.A. § 8-27-301 *et seq.* Group insurance is available under either the basic state plan or an optional plan. T.C.A. § 8-27-302. The state pays a portion of the cost of participation in the plan. T.C.A. § 8-27-303. Local education agencies which have group insurance which is determined to be equal to or better than the state plan are eligible for direct payments from the state for a portion of the costs. T.C.A. § 8-27-303.

Under T.C.A. § 8-25-304, counties are authorized to use “cafeteria plans” or flexible benefit plans which are approved under § 401(k) of the Internal Revenue Code. These plans allow a reduction of salary so that pre-tax dollars may be used to provide certain benefits.

Continuation of Insurance Coverage - COBRA. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), 29 U.S.C. §§ 1161--1168 and 42 U.S.C. §§ 300bb-1--300bb-8, requires most employers, including counties with more than twenty employees, who offer group health plans to offer continued health plan coverage for eighteen months to terminating employees (unless terminated for gross misconduct) and up to thirty-six months for spouses who become widowed, divorced or legally separated when no longer qualifying for dependent coverage. Special rules apply to disabled qualified beneficiaries. COBRA requires employers to notify all covered employees and their spouses, if married, of the provisions.

For more information regarding COBRA, see “*County's Health Insurance Obligations under the Federal Consolidated Omnibus Budget Reconciliation Act*” , CTAS Technical Bulletin 87-1 (July 1986) and “*New Regulations Detail Consolidated Omnibus Budget Reconciliation Act (COBRA)*”

Continued Health Coverage Provisions”, CTAS Technical Bulletin 88-4 (November 1987). Also, the latest federal regulations should be reviewed.

Immigration Records. Under the federal Immigration Reform and Control Act of 1986, the employer must: (1) have employees fill out their part of Form I-9 before they start to work; (2) check documents establishing employees' identity and eligibility to work; (3) properly complete the remaining portion of Form I-9; (4) retain the form for at least three years (if the individual is employed for more than three years, the employer must retain the form until one year after the employee leaves his/her employment); and (5) be able to present the form for inspection if requested by the Immigration and Naturalization Service or the U. S. Department of Labor. Failure to comply with the requirements of the act can lead to civil penalties, which can be levied for knowingly hiring unauthorized employees or for failing to comply with recordkeeping requirements. The Immigration and Naturalization Service of the U. S. Department of Justice has publications to aid the employer in properly completing Form I-9.

Drug and Alcohol Testing. Employers have become increasingly interested in testing employees for drug and/or alcohol use. Drug testing by government employers is permissible only under certain circumstances because the testing constitutes a “search” under the 4th and 14th Amendments to the United States Constitution. Any testing must meet the constitutional standard of reasonableness, and testing must be conducted in accordance with the due process and equal protection clauses of the constitution. As a general rule, only those employees who are in safety sensitive positions may be tested. Local governments can be held liable for monetary damages when an employee's constitutional rights have been violated. Before considering any testing program, the employer should consult the CTAS publication entitled *Government Employee Drug Testing . . . Look Before You Leap* (1992).

Recently-enacted federal regulations require testing of those employees who are required by law to have commercial driver licenses (CDLs). Employees who must be tested are those who drive: (1) vehicles over 26,000 pounds GVWR; (2) trailers over 10,000 pounds GVWR if the gross combination weight rating is more than 26,000 pounds; (3) vehicles designed to carry 16 or more passengers including the driver; and (4) any size vehicle used to transport hazardous materials (required to have a placard). These employees have been determined by the federal government to be in safety sensitive positions. As of January 1, 1996, all county departments where CDL drivers are employed were required to have a testing program in place for these drivers. The testing program must comply with detailed federal guidelines contained in the federal regulations. The federal requirements are discussed in more detail in “*Overview of Federal Regulations: Drug and Alcohol Testing*”, CTAS Technical Bulletin 95-1 (November 1994).

Finally, recently enacted workers' compensation laws and regulations have created a voluntary program of drug testing which can result in reduced premiums for workers' compensation insurance and denial of workers' compensation benefits to impaired workers. T.C.A. § 50-9-101 *et seq.* This program is optional – employers are not required to participate. The program must be carefully tailored to the needs of the government employer so that the employees' constitutional rights are not infringed.

It is strongly recommended that counties wishing to implement a drug and/or alcohol testing program, whether under DOT regulations or under the workers' compensation law, contract with a reputable and experienced company to handle all aspects of the testing program on the county's behalf.

Workers' Compensation. The workers' compensation laws are a non-fault based statutory scheme for compensating employees who suffer injuries in the scope of their employment. T.C.A. § 50-6-101 *et seq.* In private industry, on-the-job injuries are governed by these laws, but counties are not covered by the workers' compensation laws unless they choose to be covered. T.C.A. § 50-6-106. A county's decision to come under these laws becomes effective thirty days after the county files written notice of exercising this option with the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development. Cancellation of the coverage may be accomplished at any time by giving the same type of written notice. A county, through its legislative body, can choose to cover only designated departments and may also cancel coverage on a selective basis.

Unemployment Compensation. Under the Tennessee Employment Security Law, T.C.A. § 50-7-101 *et seq.*, unemployment insurance coverage is mandatory for county and other local government entity employees. All county employees are covered except popularly elected officials, members of the county legislative body, judges, members of the state national guard or air national guard, employees serving on a temporary basis in case of emergency (fire, storm, snow, earthquake, flood, etc.), and those in a position which is designated according to law as “a major nontenured policymaker or advisory position” or “a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week.” T.C.A. § 50-7-207(c)(6)(D).

Unemployment insurance premiums must be paid by the employer; no part of the premiums can be deducted from employees' wages. Governmental employers may finance unemployment insurance by implementing the reimbursement method or the premium/tax method. Under the reimbursement method, the employer submits quarterly payments to the Department of Employment Security for the exact amount of unemployment benefits paid to former employees and chargeable to the employer's account. Under the premium/tax method, the assigned premium rate will be 1.5% until the account has been chargeable with benefits and subject to contributions throughout the thirty-six consecutive calendar month period ending on the computation date (the December 31 preceding a tax rate year which begins on July 1). After this condition is met, the governmental employer's premium/tax rate will be computed according to a new rate table for governmental employers only. Tax rates will range from 0.3% to 3%, depending on the reserve ratio. The reserve ratio is computed by subtracting cumulative benefits charged to the employer's reserve account from cumulative contributions paid and dividing the difference by the average taxable payroll of the three recent calendar years. T.C.A. § 50-7-401 *et seq.*

Counties who wish to change their method of financing must file a written notice with the Department of Employment Security not later than thirty days prior to the beginning of the taxable year the change becomes effective. When a change is made from the reimbursement method to the premium/tax method, the employer remains liable for reimbursement of unemployment benefits which are paid after the change but are based on wages paid before the change. Benefit changes can occur up to nine calendar quarters after an employer pays wages to a worker. Either the fee official or the

county may be deemed the employer, depending upon whether the fee official or the county pays the deputies and assistants.

The reasons for an employee's termination may affect unemployment compensation benefits. Employees who voluntarily quit or who are discharged for job-related misconduct are not eligible to receive unemployment compensation benefits. Former employees receiving unemployment benefits must be able to work, available for work, and making reasonable efforts to secure suitable work. T.C.A. § 50-7-303.

Information concerning the application and benefits of this program can be obtained from local offices of the state Department of Employment Security.

Termination Pay. When an individual's employment terminates for whatever reason, the employee must be paid for all accrued overtime, compensatory time and regular earnings. In addition, the employee may be entitled to be paid for accrued but unused sick leave, vacation leave, or any other type of compensable leave, depending upon the agreement between the employer and employee. *See Phillips v. Memphis Furniture Mfg. Co.*, 573 S.W.2d 493 (Tenn. Ct. App. 1978).

Upon the death of an employee, if the employee has not designated a beneficiary to receive any unpaid wages or salary due the employee at the time of death, the employer may pay any unpaid wages or salary directly to the surviving spouse if the amount owing does not exceed \$5,000. If the deceased employee is a woman who is head of a household and the amount owing does not exceed \$5,000, the employer may pay the amount to the surviving children. If the employer is in possession of a sum less than \$5,000 due the employee which is not wages or salary and six months pass after the employee's death without application being made for the appointment of an executor or administrator, then the employer may pay the sum directly to the employee's surviving spouse, or if there is no surviving spouse then directly to the custodians or guardians of the employee's unmarried minor children. Unless the employee has designated a beneficiary to receive unpaid wages or salary, if the amount due exceeds \$5,000 the entire amount must be paid to an executor or administrator, or as ordered by the court. Employers are encouraged to inform employees of the right to designate a beneficiary at the time they are hired. T.C.A. § 30-2-103.

Retirement. Title 8, Chapter 35 of the *Tennessee Code Annotated* contains the statutory framework for counties to participate in the Tennessee Consolidated Retirement System (TCRS). The county legislative body may, by resolution legally adopted and approved, authorize all of its employees in all of its departments to participate in the TCRS, with the county making the employer's contribution into the TCRS. T.C.A. § 8-35-201. Membership of the employees is then optional with each employee presently employed at the date of the approval of membership by the board of trustees of the TCRS, and mandatory for all eligible employees entering the employment of the county after that date. T.C.A. § 8-35-203. The county legislative body may make certain elections for coverage of its employees, such as cost-of-living benefits. T.C.A. §§ 8-35-207, 8-35-208. Special rules apply for participation in the TCRS by county officials. *See* T.C.A. §§ 8-35-109, 8-35-116.

To withdraw from the TCRS, the county must give the TCRS board at least one year's notice effective June 30 of the calendar year following the end of the notice period, which must be in the form of a resolution passed by a two-thirds vote of the membership of the county legislative body.

Such resolution to withdraw may be rescinded by a two-thirds vote of the county legislative body at any time prior to the end of the one year's notice period. T.C.A. § 8-35-218.

These retirement statutes are complex, and amendments are made to these statutes by the General Assembly each year. The staff and legal counsel for the TCRS are available to help county officials with questions concerning the retirement program and to help individual participants with benefits questions.

Expense Accounts. In counties having a population of 100,000 or more according to the latest federal census, salaried county officials who are paid from county funds and are elected by the people, the county legislative body or another board or commission, and any clerk or master appointed by the chancellor, must be reimbursed for actual expenses incurred incident to holding office, including but not limited to lodging while away on official business and travel on official business, both within and outside the county. The county legislative body may by resolution determine what other expenses are reimbursable. T.C.A. § 8-26-112(a).

In all other counties, the county legislative body may by resolution choose to pay the expenses of elected officials, and may promulgate procedural rules regarding the method and type of expenses reimbursed. In counties where such a resolution has been adopted, the county executive: (1) prescribes forms to be used to reimburse expenses; (2) examines expense reports or vouchers to insure items are legally reimbursable and filed according to legislative body rules; and (3) forwards proper expense reports to the disbursing officer for payment. T.C.A. § 8-26-112(b).

All officials who are authorized to incur reimbursable expenses are required to make out accurate, itemized expense accounts showing the date and amount of each item and the purpose for which the item was expended. The official must swear before an officer qualified to administer oaths that the expense account is correct and that the expenses actually were incurred in the performance of an official duty. Receipts should be attached to the expense voucher whenever practical, and vouchers must be numbered and referred to by number. T.C.A. § 8-26-109. Making a false oath on an expense account constitutes perjury. T.C.A. § 8-26-111.

Automobiles. Depending upon population classification, certain counties may provide cars for the salaried county officials' use. In a few counties, officials may receive a monthly car allowance in lieu of a county owned car. T.C.A. § 8-26-113.

Wage Assignments and Garnishments. Garnishment of wages, salaries or other compensation due from a county to any of its officers or employees is permitted. T.C.A. § 26-2-221. Employers cannot retaliate against an employee based on a wage assignment for alimony or child support, but the employer may impose a service charge of up to 5%, not to exceed \$5.00 per month. T.C.A. § 36-5-501. The maximum amount of earnings that may be garnished is set out in T.C.A. § 26-2-106. *See also* 15 U.S.C. § 1672(b).

FIT, FICA Withholding, and Miscellaneous Reporting Matters. Counties are responsible for making the proper FICA and FIT withholdings. The county makes quarterly payments and reports to the Internal Revenue Service and the Social Security Administration. Counties have had to become particularly aware of the taxation of fringe benefits, particularly the use of county owned vehicles,

as being income to the employees. If the county fails to make the proper withholdings from income, serious penalties can be imposed by the Internal Revenue Service. The CTAS publication entitled *A Comprehensive Review: Employer-Provided Vehicle Use--An Employee Fringe Benefit* may be useful in answering questions about the special rules for reporting the necessary and incidental personal use of a county owned vehicle, such as needed commuting. County officials may be responsible for the filing of Form 1099s with the IRS.

CHAPTER 14

LIABILITY ASPECTS OF COUNTY GOVERNMENT

Liability exposure, both personal liability exposure for county officials and county liability exposure, is a topic of great importance to county governments due to the ever-increasing number of lawsuits being filed and the corresponding rise in insurance costs. Both tort and non-tort liability can be extremely costly to county officials and employees, as well as to counties as a whole. This chapter will discuss tort and non-tort liability, including certain immunity provisions of law. Liability associated with personnel, one of the fastest growing areas, will also be mentioned briefly.

A tort is a civil action based on a violation of a duty imposed by law. A tort can be the result of an intentional act or a negligent act. An action can be both a tort and a crime, as, for instance, an assault could result in both criminal liability and civil liability. The plaintiff who claims to have suffered a tort must show an act, intentional or negligent, which violates a duty imposed by law, generally the standard of care an ordinary person would exercise in like circumstances, and damages resulting from the breach of duty. The violation of duty can be through misfeasance (the improper doing of an act), or by nonfeasance (omitting to do an act).

Tennessee Governmental Tort Liability Act

In years prior to 1973, Tennessee counties were protected under the state's sovereign immunity for governmental acts, but were liable for damages resulting from proprietary activities. Governmental acts were those activities that were peculiar to governments, or activities only governments could provide, such as police protection, fire protection, education, or tax collection. Proprietary activities were those that could be provided by private as well as governmental entities, such as water and sewer service, electrical services, and mass transit.

In 1973, the Tennessee General Assembly enacted the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq.*, which provides that counties are immune under state law from all suits arising out of their activities, regardless of whether the activities are governmental or proprietary, unless immunity is specifically removed by statute. T.C.A. § 29-20-201. This immunity does not extend to liability under federal law; conduct which is immune under state law can still give rise to a cause of action under federal law.

County immunity is removed (*i.e.*, the county can be sued) for injuries arising from the:

1. Negligent operation of a motor vehicle;
2. Negligent construction or maintenance of streets, alleys, sidewalks or highways, including traffic control devices;
3. Negligent construction or maintenance of a public building, structure, dam, reservoir or other public improvement owned and controlled by the governmental entity;

4. Negligent acts or omissions by a county employee acting within the scope of employment, with exceptions noted below.

T.C.A. §§ 29-20-202 through 29-20-205.

The exceptions to the areas where the county's immunity is removed (in other words, the county is immune from suit) include claims arising from:

1. The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;
2. False imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy, or civil rights;
3. Issuing, denying, suspending, or revoking, or the failure to refuse to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;
4. Failing to inspect or negligently inspecting any property;
5. Instituting or prosecuting any judicial or administrative proceeding;
6. Negligent or intentional misrepresentation;
7. Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances;
or
8. Assessing, levying or collecting taxes.

T.C.A. § 29-20-205.

Because a county can act only through its officers and employees, it is important to determine whose action or inaction will trigger potential county liability and the application of the Tennessee Governmental Tort Liability Act. Elected or appointed officials and members of boards, agencies and commissions are easily identifiable representatives of the county. A person who is not an elected or appointed official or a member of a board, agency or commission will be considered a county employee *only if* the court specifically finds that all of the following elements exist:

1. The county selected and engaged the person in question to perform services;
2. The county is liable for the compensation for the performance of such services and the person receives all compensation directly from the county's payroll department;
3. The person receives the same benefits as all other county employees, including retirement benefits and eligibility to participate in insurance programs;

4. The person acts under the control and direction of the county not only as to the result to be accomplished but as to the means and details by which the result is accomplished; and
5. The person is entitled to the same job protection system and rules, such as civil service or grievance procedures, as other county employees.

T.C.A. § 29-20-107.

A regular member of a county voluntary or auxiliary firefighting, police or emergency assistance organization is considered to be a county employee without regard to the elements listed above. T.C.A. § 29-20-107(d). The county cannot extend immunity to independent contractors or other persons or entities by contract. T.C.A. § 29-20-107(c).

Before a county may be held liable for damages, the court must first determine that the employee's or employees' act or acts were negligent and the proximate cause of plaintiff's injury, that the employee or employees acted within the scope of their employment and that none of the exceptions listed in T.C.A. § 29-20-205 apply to the facts before the court. T.C.A. § 29-20-310.

The immunity granted to governmental *entities* under T.C.A. § 29-20-205 does not extend to officers and employees of that governmental entity in their individual capacities. However, limited immunity is granted to county officials and employees under T.C.A. § 29-20-310. In cases where the county cannot be held liable, the individual county officials and employees may be held liable but only up to the liability limits established in the Tennessee Governmental Tort Liability Act. T.C.A. § 29-20-310(c). When the case is one where the county can be held liable, the official or employee can be held liable only for that part of a judgment that exceeds the county's liability limits under the act. T.C.A. § 29-20-310(b). Willful, malicious, or criminal acts, or acts committed for personal gain, do not fall under the personal liability protective provisions of the Tennessee Governmental Tort Liability Act (nor do medical malpractice actions brought against a health care provider). T.C.A. § 29-20-310.

By statute, some county officials and employees are declared immune from suit for their activities on behalf of the county. Members of county boards, commissions, agencies, authorities, and other governing bodies created by public or private act, whether compensated or not, are absolutely immune from suit (under state law) arising from the conduct of the entity's affairs. This immunity is removed only when the conduct is wilful, wanton, or grossly negligent. T.C.A. § 29-20-201. Similarly, emergency communications district boards and their board members are immune (under state law) from any claim, complaint or suit of any nature which relates to or arises from the conduct of the board's affairs, except in cases of gross negligence by the board or its members. T.C.A. § 29-20-108. Also, employees of local education agencies, including board members, superintendents, teachers and non-professional staff members, are absolutely immune from liability (under state law) for acts or omissions within the scope of the employee's office arising from the detection, management or removal of asbestos from buildings and other structures owned or controlled by the local education agency when the agency has complied with federal environmental regulations relative to asbestos in schools. However, this immunity does not apply if the employee's acts or omissions were grossly negligent, wilful, malicious, criminal or done for personal gain. T.C.A. § 29-20-109.

The county may elect to insure or indemnify its employees for claims for which the county is immune. However, the indemnification may not exceed the liability limits established in T.C.A. § 29-20-403, except in causes of action in which the county employees' liability is not limited by the legislature. T.C.A. § 29-20-310(d). The county also may elect to insure or indemnify its volunteers. T.C.A. § 29-20-310(e).

No judgment or award rendered against a county may exceed the minimum amounts of insurance coverage for death, bodily injury and property damage liability specified in T.C.A. § 29-20-403, unless the county has secured insurance coverage in excess of the minimum requirements, and the judgment or award may not exceed the limit provided in the insurance policy. T.C.A. § 29-20-311.

The county may create and maintain a reserve or special fund to pay claims against it. Any two or more counties may enter into an agreement for joint or cooperative action to pool their financial and administrative resources to provide risk management, insurance, reinsurance, self-insurance for liabilities created under this act, workers' compensation, unemployment compensation, and motor vehicle insurance. T.C.A. § 29-20-401.

The current liability limits under the Tennessee Governmental Tort Liability Act are as follows:

Type of Claim	Limit
Bodily injury or death of any one person in any one accident, occurrence or act	\$130,000
Bodily injury or death of all persons in any one accident, occurrence or act	\$350,000
Injury to or destruction of property of others in any one accident	\$ 50,000

T.C.A. § 29-20-403.

These limits do not apply to federal civil rights actions in state or federal courts.. Suit must be commenced within twelve months after the cause of action arises. T.C.A. § 29-20-305. However, the one-year statute of limitations may be extended when claims involve persons under legal disabilities (incompetence, minor) or when the injured party has reasonably failed to discover the cause of action against the county, county officials, or employees.

The county or its insurer shall not be held liable for any claim arising under state law for which the county is immune under the act unless the county has expressly waived such immunity. The county or its insurer shall not be held liable for any judgment in excess of the limits of liability set forth in T.C.A. § 29-20-403, unless the county has expressly waived such limits. T.C.A. § 29-20-404. However, the act does not prohibit or limit a county from purchasing an insurance policy or contract in such amounts as it deems proper for liabilities which may arise under federal law. T.C.A. § 29-20-404.

The county may insure any or all of its employees against all or any part of their liability for injury or damage resulting from a negligent act or omission. The expenditure is deemed a public purpose and may be paid from funds derived from the tax levy authorized in T.C.A. § 29-20-402. T.C.A. § 29-20-406.

Any sheriff or group of sheriffs may purchase insurance or enter into an agreement to insure such sheriff and any or all employees against all or any part of their personal liability for injury or damages arising as a result of the act or omission of the sheriff or employee. T.C.A. § 29-20-406.

Counties must file an annual report regarding its tort liability activities for the previous year with the office of the State Treasurer beginning on March 30, 2001, and every year thereafter for a period of three years. The form is to be prescribed by the State Treasurer. T.C.A. § 29-29-1__ , Chapter 964, Public Acts of 2000.

Liability for Personnel Matters

Important employment law considerations include hiring, compensation, benefits, termination, retirement, the federal Fair Labor Standards Act (FLSA), the federal Family and Medical Leave Act (FMLA), right-to-know statutes, reserve service, jury service, the Occupational Safety and Health Act, the Equal Pay Act, the Immigration Control Act, the insurance provisions of the Consolidated Omnibus Budget Reduction Act (COBRA), FICA and FIT withholdings, and maternity leave.

An employer must refrain from retaliating or firing based on the employee's exercise of a protected constitutional right, *i.e.*, freedom of speech, or statutory right, *i.e.*, workers' compensation. Discriminatory motives should be avoided in every employment aspect. Under state and federal law, an employer may not discriminate against an employee or a potential employee based upon race, color, sex, religion, national origin, age or disability (including infectious, contagious or similarly transmittable diseases). Further, any form of sexual harassment is illegal. An individual may file a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) or the Tennessee Human Rights Commission (THRC).

Specifically, an employer may not fire an employee solely for: (1) refusing to participate or remain silent about illegal activities; or (2) using an agricultural product not regulated by the alcoholic beverage commission that is not otherwise prohibited by law, *i.e.*, smoking, if the employee follows the employer's guidelines regarding the use of the product while at work. T.C.A. § 50-1-304. Further, the 1st Amendment prohibits patronage dismissals of certain types of governmental employees. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 64 (1990). Whether party affiliation is an appropriate requirement for the effective performance of the public office depends on whether the job requires trust and confidentiality. *Williams v. City of River Rouge*, 909 F.2d 151, 155 (6th Cir. 1990). “[G]overnment officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). However, “[p]ublic officials are expected to be aware of clearly established law governing their conduct.” *Long v. Norris*, 929 F.2d 1111, 1115 (6th Cir.) 1991., *cert. denied*, 112 S. Ct. 187 (1991).

Other Non-Tort Liability

The limitations of the Tennessee Governmental Tort Liability Act do not apply to many types of state and federal court actions. For example, in state court, actions for workers' compensation, breach of contract, inverse condemnation, and other common law and statutory violations may be the basis of a non-tort action.

Breach of Contract. If a county enters into a contract and then breaches, the county is responsible for damages. The extent of liability depends upon the contract's terms and damages suffered by the parties. If an official does not have actual authority to enter into a contract, the court may require the individual to specifically perform the contract.

Other Actions. Lawsuits may be brought against the county if law enforcement and other court personnel engage in illegal behavior affecting search and seizure, voting rights, arrest, discriminatory enforcement of statutes, unlawful force. These actions may be brought in federal court under the federal Civil Rights Act, 42 U.S.C. § 1983, or in state court under the same federal statute or common law. *Poling v. Goins*, 713 S.W. 2d 305 (Tenn. 1986).

Damages are not recoverable for antitrust violations from any local government, or official or employee acting in an official capacity. 15 U.S.C. § 35. In addition, damages are not recoverable for antitrust violations in any claim against a person based on any official action directed by the county, or official or employee acting in an official capacity. 15 U.S.C. § 36. However, counties should be careful in restricting competition through granting exclusive franchises, making referrals to attorneys or lending institutions, or granting access to records.

A substantial amount of litigation involves county employees and other matters such as injuries to students during school hours, operating a county vehicle, county health department matters, failure to make necessary repairs on county roads, the existence of a dangerous condition, or the absence of a safety device. County officials should seek advice from the county attorney when questions arise with liability implications.

CHAPTER 15

SOLID WASTE, SANITATION, AND HEALTH

One of the more important functions of county government, as well as one which has recently undergone substantial changes, is solid waste disposal. There are three sources of legislative authority which may provide the framework for these services: T.C.A. title 5, T.C.A. title 68, chapter 211, and, in some cases, private acts, county charter or consolidated government charter.

Solid Waste Management, Collection and Disposal - Title 5

Counties are authorized to provide garbage and rubbish collection and/or disposal services to the entire county or to special districts within the county and are also granted the power to do all things necessary to carry out these functions. T.C.A. §§ 5-19-101, 5-19-107. This authority is exercised through resolution by the county legislative body and carried out by an existing agency, a county sanitation department, or, more commonly, a county board of sanitation appointed by the county executive and confirmed by the county legislative body. Also, a county may contract with a private company or another governmental entity to provide these services for county residents. T.C.A. § 5-19-104. If a municipality within the county furnishes garbage (solid waste) collection and disposal services, the county must establish service districts outside the municipality to fund this county service if the property tax is a source of funding for the county solid waste services. T.C.A. § 5-19-108. If the county services are provided within special service districts, they are funded by user fees or by a property tax levied only within the district served, or a combination of the two. T.C.A. § 5-19-109. Plans for collection and disposal services must be submitted to the regional planning commission for study before they are carried out. T.C.A. § 5-19-112. The county must inspect these facilities at least once every quarter, and the commissioner of health may also investigate and make recommendations for improvement. T.C.A. §§ 5-19-113, 5-19-114.

Solid Waste Management, Collection and Disposal - Title 68, Chapter 211

In an effort to coordinate and plan for safe, efficient solid waste disposal in the state, the Tennessee General Assembly has enacted several pieces of legislation which are compiled in title 68, chapter 211 of the *Tennessee Code Annotated*. To comply with the requirements of this chapter, all local governments must engage in specified planning and organizational activities, which are briefly summarized below. (See the Solid Waste Management Act of 1991, T.C.A. §§ 68-211-801 through 68-211-874).

Local Planning

Startup Procedure. To begin implementation of the Solid Waste Management Act, counties were instructed to form solid waste regions (single or multicounty), and establish a solid waste board and advisory committee for each region. Regional areas (and their boards) may be changed only by approval of the county legislative bodies of the counties involved in the change, and with the approval of the department of environment and conservation, which will review the new or revised plans and receive information regarding the new board members. T.C.A. §§ 68-211-811 through 68-211-813. These regional boards are constituted according to the provisions of T.C.A. § 68-211-813.

Additionally, each region was required to formulate a plan for collection and disposal of solid waste in the area, and submit this plan to the state planning office by July 1, 1994. The plan may be revised at any time to reflect subsequent developments in the region and must be revised every five years after the plan's initial approval. T.C.A. § 68-211-814.

Plan Requirements. The plan, and any revised plan, submitted by each region must be consistent with the state solid waste plan and with all relevant state laws and regulations. At a minimum, each plan must contain the following items:

1. Demographic information;
2. A current system analysis of waste streams, collection capability, disposal capability, costs, and revenues;
3. Adoption of the statutorily-required uniform financial accounting system;
4. Anticipated growth trends and waste capacity needs for the next ten years;
5. A recycling plan;
6. A plan for the disposal of household hazardous wastes;
7. Adoption of the statutorily-required reporting requirements;
8. A description of waste reduction activities designed to attain the required 25% reduction in solid waste;
9. A description of education initiatives designed to achieve the goals stated in the statute;
10. An evaluation of multi-county solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multi-county regional approach;
11. A timetable for implementation of the plan;
12. A description of the responsibilities of each participating jurisdiction;
13. A certification of review and approval of the plan (or revised plan) from the solid waste authority (organized under chapter 211, part 9), if such an authority has been formed, or if no such authority has been formed, from the county legislative body of each county in the region; and
14. Any other information the commissioner of the department of environment and conservation deems relevant.

T.C.A. § 68-211-815.

Solid Waste Authority. A county (or counties in multi-county solid waste regions) may decide to form a solid waste authority to operate all solid waste systems within the region. (See the Solid Waste Authority Act in T.C.A. §§ 68-211-901 through 68-211-925.) Cities may participate or remain outside the authority, although all counties in the region must agree to the creation of the authority before it may be formed; a municipality with most of its territory in the county creating the authority may participate. T.C.A. § 68-211-903. Similarly, the authority can be dissolved by agreement of its participating counties and cities. The board of directors may be composed of the same members as the region's solid waste board, but this is not required. The method of selection, officers required, terms of office, and vacancy procedures are described in T.C.A. §§ 68-211-904, 68-211-905.

The advantage of using a solid waste authority to oversee the region's waste management lies in the authority's broad statutory powers. The solid waste authority is a separate legal entity which may issue bonds, incur debts, enter into contracts, and exercise the power of eminent domain. With the concurrence of the counties and municipalities participating in the solid waste authority, it may exercise exclusive control over the publicly owned solid waste systems within its boundaries. T.C.A. § 68-211-906.

Public Ownership of Solid Waste Facilities. Counties have several options through which they may fulfill their responsibilities for solid waste management: they may contract with private entities for those services, they may provide services or contract for services through solid waste authorities, or they may provide the services themselves. A county or municipality may apply for a solid waste facility permit. The county or municipality is financially responsible for tests needed to evaluate the application; or it may conduct its own studies to collect the required data. T.C.A. § 68-211-301. A county may execute a contract of obligation instead of a performance bond to insure proper operation and closure of its publicly-owned facilities. T.C.A. § 68-211-116. In addition to equipment for collection and disposal of solid waste, a county may also construct and operate energy recovery and resource recovery facilities which process waste into energy fuels. T.C.A. § 68-211-502.

Flow Control and Regional Approval Options. State law appears to grant regions and solid waste authorities powers under certain conditions to direct the flow of solid waste generated within the region and to restrict the flow of solid waste into the region for disposal. However, federal court decisions, including recent U.S. Supreme Court rulings, makes the validity of Tennessee statutes on flow control very questionable since the case law strongly indicates they may violate the commerce clause of the U.S. Constitution. *Fort Gratiot Sanitary Landfill Inc. v. Michigan Dept. of Natural Resources*, 112 S.Ct. 2019 (1992); *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 114 S.Ct. 1677 (1994).

State law also provides that any construction or expansion of solid waste facilities or incinerators within the region must be approved by the board of the region, or the (Part 9) solid waste authority if one has been formed, before a permit is issued. The region or solid waste authority is to hold a public hearing after proper notice, and may reject the proposal if it is inconsistent with the regional plan. T.C.A. § 68-211-814.

Sanctions. If any region fails to submit a plan in a timely fashion, submits an inadequate plan, or fails to comply with other provisions of this act, then the commissioner of environment and conservation will impose sanctions, including loss of funds from the solid waste management fund and civil penalties of \$1,000 to \$5,000 per day of noncompliance. T.C.A. § 68-211-816.

Operational Requirements. There are several different sources of authority governing the operation of solid waste disposal facilities, including federal legislation and regulations as well as state law and its implementing rules. In addition to the Solid Waste Management Act, which has been mentioned above, it is important to note the Solid Waste Disposal Act (T.C.A. §§ 68-211-101 through 68-211-121) as well as other relevant sections in Title 68. Furthermore, other governmental entities such as counties, municipalities, and boards of health may also adopt regulations governing solid waste disposal if their standards are at least as stringent as those set out by the state department of environment and conservation and consistent with state and federal law. T.C.A. § 68-211-107.

Although a detailed description of operational requirements for solid waste systems is beyond the scope of this book, a short summary of a few important principles is included below:

Minimum Service Levels. Each county must see that there is at least one solid waste collection and disposal system for the needs of county residents; at a minimum there must be one or more convenience centers, unless a higher level of service, such as household garbage pickup, is provided. The service is to be coordinated with those available from municipalities within the county, and may be supplied directly by the county, by contract, or through a solid waste authority. The convenience centers must also comply with regulations developed by the department of environment and conservation. T.C.A. § 68-211-851.

25% Reduction Goal. The current goal of the state, as well as each individual solid waste region, is a 25% reduction in municipal solid waste disposed at Class I municipal solid waste landfills and incinerators by December 31, 2003. The reduction is measured on a per capita basis by weight from a base year of 1995, unless a region can clearly demonstrate that data from that year is clearly in error. Diversion of solid waste to a Class III or IV landfill counts toward this goal. As an alternative to calculating the waste reduction and diversion goal on a per capita basis, regions have the option of calculating the goal on an economic growth basis using a method prescribed by the department of environment and conservation and approved by the municipal solid waste advisory committee. This goal applies to regions, but not to individual disposal facilities or incinerators. If a region does not meet its reduction and diversion goal, then the department will objectively assess the activities and expenditures of the region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions that meet the goal and whether the failure is beyond the control of the region. A county or region may receive credit toward its goal by documented reductions from recycling and source reduction programs prior to 1995, but not earlier than 1985. Failure of the region to meet either the 25% waste reduction or diversion goal or to receive a favorable qualitative assessment by the department may subject the offending counties, municipalities and solid waste authorities to considerable monetary sanctions as described in T.C.A. § 68-211-816. These sanctions may apply to individual counties or cities within the region that cause the failure. T.C.A. § 68-211-861.

In an effort to encourage ways to reduce the amount of waste generated, the Tennessee General Assembly required the state planning office to establish a statewide plan for solid waste reduction. This state responsibility has been transferred to the department of environment and conservation. Each development district is involved in determining the needs of each county in the district. Waste reduction strategies include recycling, mulching, composting, and waste-to-energy incineration or resource recovery. There are also statutes to encourage state agencies to purchase and use recycled materials. T.C.A. §§ 68-211-601 through 68-211-608.

Problem Wastes. Certain substances are no longer to be placed in a landfill, but are to be disposed of through alternative methods. Among these is household hazardous waste. To provide for the safe collection of these household hazardous wastes, the department of environment and conservation must provide, directly or by contract, for the collection of such wastes on designated days in each county. The county or authority is responsible for advertising the location of these units, the days and hours on which they will be available, and examples of hazardous household wastes. Furthermore, the county or solid waste authority must appoint at least one person to represent the

county or authority to be present at the site on collection days in order to assist the persons operating the mobile collection unit. T.C.A. § 68-211-829.

Other examples of wastes prohibited at landfills include whole waste tires, lead-acid batteries, and used oil, all of which will no longer be accepted at any solid waste disposal facility or incinerator. Each county must provide at least one site to receive and store these materials, recycling as much of it as is reasonably possible. T.C.A. § 68-211-866. Whole waste tires may not be placed in a landfill. After July 2, 2002, a county cannot dispose of shredded waste tires in a landfill. The department of environment and conservation's program for beneficial end use of waste tires will provide grants to counties for waste tire management and the department may contract for the collection, transportation and beneficial end use disposal of waste tires on a multi-county basis, but these contracts are subject to approval by the county legislative body of each county affected. T.C.A. § 68-211-867.

Baled Waste and Inspections. There are special detailed instructions governing the disposal of baled waste. It may not be placed in a landfill unless (1) that facility is licensed to receive hazardous waste, (2) the waste was baled and certified according to the procedure specified by statute, or (3) the waste was properly verified by the supervisor of the receiving landfill. T.C.A. § 68-211-119. A manifest which gives the nature of the waste, its origin and destination, and the names and addresses of all those in possession of it must accompany the baled waste and be maintained for thirty years. T.C.A. § 68-211-120.

In an effort to prevent processing and disposal of unlawful materials, the operator of each facility must inspect the waste. The inspection should be conducted according to a plan which is approved by the commissioner of environment and conservation and is similar to that for baled waste. T.C.A. § 68-211-212.

Education. A component of each region's solid waste plan must be an education program "to assist adults and children to understand solid waste issues, management options and costs, and the value of waste reduction and recycling." T.C.A. § 68-211-842. After a region's plan is approved, the department of environment and conservation may award matching grants for implementing the education program. T.C.A. § 68-211-847.

Recycling. Each county must provide at least one site for the collection of recyclable materials within the county. T.C.A. § 68-211-863. From funds available from the solid waste management fund, the department of environment and conservation is required to provide a matching funds grant program for the purchase of equipment needed to establish or upgrade recycling at a public or not-for-profit recycling collection site. However, these grants will generally not be granted if there is adequate equipment at privately-owned facilities which serve the same area. The eleven counties which generate the greatest amount of solid waste receive a rebate from the state surcharge on waste disposed in the county in accordance with a formula described in T.C.A. § 68-211-825. A county may only expend the rebate for recycling purposes and must expend from local funds an amount equal to the amount of the rebate towards this purpose. Counties which receive recycling rebates are not eligible for the recycling equipment grants.

Reporting Requirements. Each solid waste region must submit an annual report to the department of environment and conservation. This report is to follow the format prescribed by the department, and must contain solid waste information in the following areas: collection, recycling, transportation, disposal, public costs, and any other information which the department deems relevant. In conjunction with the annual report each region must also submit an annual progress report on the implementation of the region's solid waste disposal plan. T.C.A. § 68-211-871. There are additional reporting requirements for operators of recycling collection centers and for owners and operators of solid waste disposal facilities and incinerators. The owner or operator of a Class 1 disposal facility or incinerator must keep records of all amounts and county of origin of solid waste, measured in tons, received at the facility. T.C.A. §§ 68-211-862, 68-211-863.

State Revenue, Funding and Grants. A state fund through which most of the statewide programs are financed is the solid waste management fund. It is funded in part through a surcharge on each ton of municipal solid waste received at all facilities or incinerators. T.C.A. § 68-211-835. This state surcharge is 85¢ per ton until July 1, 1997; then it is 80¢ per ton from July 1, 1997 through June 30, 1998; then it is 75¢ per ton from July 1, 1998 through June 30, 1999, whereupon the state surcharge will expire unless extended by an amendment to the current law. Additionally, the state solid waste management fund receives revenue from a pre-disposal fee of \$1.00 per tire collected by dealers upon the sale of a each new tire in this state. T.C.A. § 67-4-1603. Counties, municipalities, and solid waste authorities may be able to receive grants from the fund for such activities as planning assistance (T.C.A. § 68-211-823), programs to establish or upgrade statutorily-required convenience centers (T.C.A. § 68-211-824), recycling (T.C.A. § 68-211-825), education (T.C.A. § 68-211-847), and importantly, waste tire collection and disposal (T.C.A. § 68-211-867). Additionally, the department of environment and conservation, from available funds in the solid waste management fund, may directly or through contract, investigate and clean-up unpermitted waste tire disposal sites. T.C.A. § 68-211-831.

Local Revenue Sources. In addition to state aid, there are several other sources through which counties and other governmental entities may fund their solid waste management operations. In general, these options are cumulative: they may be used singly or in mix-and-match combinations to suit each area's needs. These revenue sources include the following choices:

1. *Tipping Fee.* Any county, municipality, or solid waste authority which owns a disposal facility or incinerator may impose a tipping fee on each ton of waste or its volume equivalent. The amount of the fee is determined according to the cost of providing services, and the uniform solid waste accounting system is to be used to arrive at this cost. Revenue raised by the tipping fee is to be used only for solid waste management purposes. T.C.A. § 68-211-835(a).

2. *Host Fee.* A county that is host to a solid waste disposal facility or incinerator used by other counties in the same region may impose a surcharge on each ton or volume equivalent processed by that facility. The purpose of the host fee is to encourage the use of regional facilities; these revenues may be used only for solid waste management purposes or to offset costs resulting from hosting the facility. T.C.A. § 68-211-835(e).

3. *General Surcharge.* After approval of the regional solid waste plan, a municipality, county, or solid waste authority may impose a surcharge on each ton of waste received at a facility within that

area. Funds collected through this surcharge may be expended for collection or disposal purposes. T.C.A. § 68-211-835(f).

4. *Disposal Fee.* A county, city, or solid waste authority may collect a mandatory user fee which bears a reasonable relationship to the cost of providing disposal services. This fee may be imposed on residences and businesses. A disposal fee may not be imposed on a waste generator who owns the facility for processing its own waste. A county disposal fee may be imposed on municipal residents if the municipal residents have access to the services funded by the disposal fee, such as a convenience center. Op. Tenn. Att’y Gen. 93-49 (July 23, 1993). Disposal fee revenues may be used only to establish and maintain collection and disposal services to which all county residents have access. Upon agreement with the area's electric utility, these fees may be collected as part of the utility's billing process. T.C.A. § 68-211-835(g).

5. *Property Tax.* A county may levy a general property tax to pay for waste collection and disposal services if these are available to all the county and no municipality provides its own services. If a city in the county furnishes its own waste collection and disposal, then districts must be established so that property taxes are levied only upon the area to be served. T.C.A. §§ 5-19-108, 5-19-109.

6. *Service Charge.* A county may charge users a reasonable fee for providing waste collection services. T.C.A. § 5-19-107.

Landfill Approval By County - The “Jackson Law”

The so-called “Jackson Law” is an optional general law which may be adopted by a county or municipal legislative body by a two-thirds (2/3) majority vote. If adopted, it provides that no new construction will be initiated for a privately owned landfill which accepts waste other than that generated by the owner unless such proposed construction receives the approval of the county legislative body. Additionally, if such proposed construction is in an incorporated area or within one mile of an incorporated area, the governing body of the municipality must also approve before construction may be initiated. T.C.A. § 68-211-701. Before the vote of the legislative body, public notice and public hearings are required. T.C.A. § 68-211-703. This law states criteria which must be considered by the legislative body in determining whether or not to approve the construction. Judicial review of the legislative body’s determination may be had before the chancery court for the county in which the landfill is to be located. T.C.A. § 68-211-704. The Tennessee Court of Appeals upheld a decision by the Davidson County Chancery Court that exclusion of county and municipal landfills from application of Jackson Law as provided in T.C.A. § 68-211-706(b) is unconstitutional as a violation of equal protection clause since there is no rational basis for this discrimination against private landfills. However, the Court applied the doctrine of elision (removal of offending provision, exemption of public landfills) and upheld the remainder of the act. *Profill Development, Inc. v Dills*, 1977 WL 203596 (Tenn. App.), April 25, 1997.

In a new statute separate from the “Jackson Law”, municipalities must obtain the approval of the county legislative body at two consecutive regularly scheduled meetings before the municipality may exercise the power of eminent domain to obtain property to be used as a landfill for solid waste disposal outside of the corporate limits of the municipality. T.C.A. § 68-211-122.

Hazardous Chemical Right-to-Know-Law

Purpose and Scope. Federal regulations and state law require employers, including counties, to provide their employees with information concerning any hazardous chemicals which the employee might contact in the course of employment. Tennessee's "Hazardous Chemical Right-to-Know-Law" is found in T.C.A. § 50-3-2001 *et seq.* The intent of this law is to insure that information about hazardous chemicals is available to employees, emergency personnel, and the public. The law covers local governments as well as industries which use hazardous chemicals, including manufacturers of the chemicals.

Notice Requirements. The Tennessee Commissioner of Labor and Workforce Development is required to maintain a list of regulated hazardous chemicals which is to be available for public inspection. T.C.A. § 50-3-2006. If county department heads have a question as to whether or not a material is hazardous, they may check the DOL list. If the material in question is on the DOL list, the county is then obligated to request a Material Safety Data Sheet (MSDS) from the manufacturer, and to keep it for review by employees. T.C.A. § 50-3-2008.

Additionally, nonmanufacturing employers, including county governments, must compile a list of hazardous chemicals normally used or stored in the workplace in excess of fifty-five gallons or 500 pounds. This workplace chemical list must be filed with the commissioner of labor and workforce development and, with some exceptions, with the county health department, and must be maintained by the county for at least thirty years. T.C.A. § 50-3-2015. Furthermore, the employer must file a copy of the workplace chemical list with the fire department serving the workplace, including the name and telephone number of a knowledgeable representative of the employer and, upon written request, a copy of the MSDS for any chemical in the workplace; this information is to be confidential except in an emergency involving the threat of human life. The employer must permit on-site inspections by the fire department and must install signs outside any buildings which contain a Class A or B explosive, poison gas, water-reactive flammable solid, or radioactive material. T.C.A. § 50-3-2014.

Labeling Requirements. Existing labeling on containers of hazardous chemicals is not to be removed or defaced. If the nonmanufacturing employer transfers a hazardous chemical from the original container to another container, the label information must also be transferred. Employees shall not be required to work with a hazardous chemical from an unlabeled container, unless the employee places the chemical in a portable container for immediate use. T.C.A. § 50-3-2009.

Training Requirements. Every nonmanufacturing employer must provide an education and training program for its employees who use or handle hazardous chemicals. Additional training must be provided any time a new hazardous chemical is introduced into the workplace or whenever new, significant information is received. The training program must conform to the regulations of the commissioner of labor and workforce development, but at a minimum must include the following: information on interpreting labels and MSDSs as well as the location of these in the workplace, operations where hazardous chemical are present, physical and health dangers of these chemicals, protective measures, frequency of training, and general safety instructions. The employer must keep a record of training dates and provide annual refresher courses. T.C.A. § 50-3-2010.

Hazardous Waste and Hazardous Substances

Hazardous waste storage facilities, treatment facilities and disposal facilities throughout the state are under the supervision of Tennessee's department of environment and conservation. T.C.A. § 68-212-107. Before the state issues a permit for a facility for the storage, treatment, or disposal of hazardous waste, it must give public notice of the application and, within forty-five days of that notice, hold a public community meeting concerning the permit application. The county legislative body, the municipal governing body, if any, where the facility is proposed, and the governing body of any municipality located within one mile of the proposed facility must be represented at the meeting; failure to participate is deemed a waiver. The county legislative body or other governing bodies may make reports summarizing issues they feel are appropriate. If the governing body chooses to make a report, it must include a decision to accept, reject, or modify the application. The report must be submitted within ninety days of the community meeting. The decision announced in this report is to be based on the factors listed in T.C.A. § 68-212-108. The commissioner of environment and conservation may then affirm the decision, or may modify or reverse it if the decision is based upon improper factors. T.C.A. § 68-212-108. The local governing body may seek judicial review of an adverse determination. T.C.A. § 68-212-111.

There are statutory incentives available to counties in which commercial facilities for the disposal of hazardous waste are located. There is a "responsible waste disposal incentive fund" which, if funded by the legislature, is available to counties meeting the eligibility requirements. T.C.A. § 68-212-210. Furthermore, any local government receiving these funds may levy an additional fee, not to exceed statutory maximums, on the disposal of hazardous wastes at facilities within its jurisdiction. T.C.A. § 68-212-211. The county also has limited monitoring and inspection authority at these sites. T.C.A. § 68-212-208.

In addition to state legislation on hazardous substance management, there are federal provisions with which county governments must comply if they deal with hazardous materials. Local governments should also be aware that landfills containing hazardous waste may be subject to Superfund cleanup requirements.

Underground Storage Tanks

A statewide program, in conjunction with a national effort, is in effect to protect the public and the environment from leaking underground petroleum storage tanks. All owners, including counties, of underground tanks for the storage of petroleum products are subject to the program specifications. Among other requirements, owners must prevent leaks and protect their tanks from corrosion; they must notify the commissioner of environment and conservation and the United States Environmental Protection Agency of the existence of the tank. A fund has been created to pay for leak cleanups. Owners must contribute fees to this fund and the proceeds of an environmental assurance fee (4/10ths cents per gallon of petroleum products imported into this state or manufactured in this state) are deposited into this fund. T.C.A. § 68-215-101 *et seq.*

Medical Services

County Board of Health. The primary agencies for local health services are the county board of health and the county health department. Each county is authorized to establish a board of health which is charged with the following duties: governing the policies of the health department, enforcing state health regulations, adopting rules to promote the general health of the county, and preparing an annual budget. The board must consist of the following members:

1. The county executive;
2. The county director of schools or his or her designee;
3. Two physicians nominated by the county medical society;
4. One dentist nominated by the county dental society;
5. One pharmacist nominated by the county pharmaceutical society;
6. One registered nurse nominated by the county nurses' association;
7. The county health director (ex officio member);
8. The county health officer (ex officio member);
9. A veterinarian and a citizen representative (optional members).

T.C.A. § 68-2-601.

Violation of health board regulations is a Class C misdemeanor, punishable by a fine not to exceed \$50 and by imprisonment for up to thirty days, or both. If the county fails to establish an active board of health, the commissioner of health and environment may establish a health advisory committee. T.C.A. § 68-2-601.

County Health Department. Unlike the board of health, the county health department is a required agency. It is to be headed by the county health director, who is appointed by the commissioner of health and is compensated, at least in part, by the state. The commissioner also appoints a county health officer who must be a physician. If the county health director is a physician, he or she may also serve as the county health officer. T.C.A. § 68-2-603.

The county legislative body must provide necessary office facilities and funds for the functioning of the county health department. T.C.A. § 68-2-604. All private acts relative to county boards of health or county health departments remain in effect after the passage of T.C.A. § 68-2-601 *et seq.* T.C.A. § 68-2-606.

Community Health Agencies. The state commissioner of health is authorized by T.C.A. § 68-2-1101 *et seq.* to establish community health agencies to encourage and coordinate health care for indigents. The statute authorizes four metropolitan health agencies (in the state's four largest cities) and eight rural agencies, each directed by its own board. T.C.A. § 68-2-1104. In order to carry out their duties these agencies may execute contracts, acquire property, procure insurance, collect fees, and perform other actions needed to achieve its goals. T.C.A. § 68-2-1106.

Health Care Facilities. In order to operate in Tennessee, every publicly or privately owned hospital, nursing home, recuperation center, ambulatory surgical treatment center, mental health hospital or home for the aged is required to be licensed by the state department of health. T.C.A. § 68-11-201 *et seq.* A county may operate such facilities if they are licensed and maintained according to rules established by the state department of health. T.C.A. §§ 68-11-204, 9-21-105(20)(A). The state

health care licensing board has exclusive jurisdiction to regulate this area, so that any conflicting regulations adopted by local governments are inoperative. The state health care licensing board must approve all new health care facilities before construction work may begin. T.C.A. § 68-11-202.

Public School Nurse Program. This program was created as a part of the department of health for the purpose of improving school performance, lowering the dropout rate, and safeguarding the health and well-being of students in Tennessee public schools. Nurses within the program are administratively assigned to various county and district health departments or local education agencies, but remain under the control and direction of the executive director of the school nurse program. This plan does not preempt local education agencies from continuing to employ and supervise school nurses who are not employees of the program. T.C.A. § 68-1-1201 *et seq.*

Ambulance and Emergency Medical Services. A county may, by resolution of the county legislative body, establish a county ambulance service; it may also contract for the provision of this service by private entities or other governmental agencies. Also, two or more counties and/ or municipalities may enter into joint agreements with each other and with a provider of either emergency or non-emergency ambulance service on a county-wide basis, except in Davidson and Shelby counties. T.C.A. § 7-61-101 *et seq.* The Emergency Medical Services Act of 1983, T.C.A. § 68-140-501 *et seq.*, establishes a State Emergency Medical Services Board to regulate agencies which provide ambulance and emergency medical services. Although counties are not required to provide ambulance services (T.C.A. § 68-140-518), they must comply with this act if they choose to provide them. T.C.A. § 68-140-516.

Public Water Supplies and Wastewater Treatment

The department of environment and conservation is responsible for supervising the construction, maintenance, and operation of public water supply and sewerage systems throughout the state. T.C.A. § 68-221-101 *et seq.* The Tennessee Safe Drinking Water Act of 1983, T.C.A. § 68-221-701 *et seq.*, provides the state water quality control board with extensive powers to adopt rules and regulations regarding public water systems and public water supplies. T.C.A. § 68-13-704. This chapter also deals with wastewater treatment, construction and financing of facilities, and the creation of authorities and boards governing the operation and regulation of these facilities. One of these acts is The Wastewater Treatment Works Construction Grant Act of 1984, codified in T.C.A. § 68-22-801 *et seq.* This act provides financial assistance to encourage local governments to construct wastewater treatment facilities. T.C.A. § 68-22-802.

Other sections deal with subsurface sewage disposal systems and set minimum standards with which these systems must comply. T.C.A. § 68-221-401 *et seq.* Subsurface sewage disposal systems are also under the general supervision of the state department of environment and conservation, and therefore are subject to rules, regulations, and standards established by the commissioner of that department. However, county health departments are authorized to enter into agreements with the commissioner to implement the requirements of this part, provided that the county's staff and resources are adequate to comply with the standards of the act. T.C.A. § 68-22-403.

Electricity may not be furnished to newly-constructed houses or establishments unless the official electrical inspector verifies that the new construction is served by a public sewerage system or that

the builder has applied for a permit for a subsurface sewage disposal system. T.C.A. § 68-221-414. Any county with a countywide building permit program is exempt from the requirements of this section if it certifies to the commissioner of environment and conservation that its program requires a subsurface sewage disposal system permit before a building permit can be obtained. Any county which subsequently adopts a countywide building permit program will become exempt if it meets the requirements of this section. T.C.A. § 68-221-414. Also, a representative of the commissioner of environment and conservation (county health officer) must approve subdivision plats with parcel of less than five acres when subsurface sewage disposal is to be used. T.C.A. § 68-221-407.

Urban Type Public Facilities

Counties are authorized to establish, construct, install, acquire, operate, and maintain urban type public facilities. These include pipelines, docks, and water treatment systems, as well as operations to dispose of wastewater, sewage, garbage, and other waste matter (see discussion above). T.C.A. § 5-16-101. In order to exercise this authority, the county legislative body, by resolution, may designate an existing agency, create a public works department, or establish a board of public utilities to oversee the project. The composition of this board varies depending on the county's population (T.C.A. § 5-16-103), although a superintendent with specific statutory powers and duties is its head. T.C.A. §§ 5-16-104, 5-16-105. The statute also provides for bond issues (T.C.A. § 5-16-106), and addresses the relationship between cities and counties in the operation of these facilities. T.C.A. §§ 5-16-107, 5-16-110, 5-16-111. Before the county legislative body can authorize any of these services, it must submit plans to the regional planning commission for study. T.C.A. § 5-16-112.

CHAPTER 16

PLANNING AND ZONING

Regional Planning

Public Chapter 1101 and County Growth Plans. In 1998 the Tennessee General Assembly passed legislation, Public Chapter 1101, which requires a coordinated planning effort between a variety of public and private entities throughout the state. The legislation also reforms procedures and requirements for annexation and incorporation. As of July, 2000, 75 counties, including 278 municipalities, had adopted growth plans.

PLANNING: T.C.A. §§ 6-58-101 *et seq.*

The law calls for the development of a comprehensive growth plan in each county, covering projected growth in the next 20 years.

Designation of Zones. At a minimum the growth plan must identify the following three types of areas if they exist within the county.

Description of Three Types of Zones.

- 1) Urban Growth Boundary (UGB) - a reasonably compact area which contains the corporate limits of a municipality and the adjoining territory where high density commercial, industrial and/or residential growth is expected.
- 2) Planned Growth Area (PGA) - compact sections outside incorporated municipalities and outside growth boundaries where high or moderate density growth is expected, if there are such areas in the county; new incorporations may occur only within these regions. A county has authority to provide services within a PGA and to set a separate tax rate for these services.
- 3) Rural Area (RA) - territory which is not within another zone and which is to be preserved for uses other than high density development.

Factors in Determining Zones. There are several factors which must be taken into account in determining the boundaries of these three areas:

- 1) Population growth projections, to be developed in conjunction with the University of Tennessee.
- 2) Current and projected costs of infrastructure, urban services and public facilities needed for development and methods to finance these needs.
- 3) The need for additional land area for high density development, after considering the feasibility of redeveloping all sites within the current boundaries.
- 4) The effect of development upon agricultural land, forests, recreational areas and wildlife management areas.
- 5) The likelihood of eventual incorporation into a municipality.

Public Hearings. Before proposing any zone to the coordinating committee, the county or municipality must hold at least two public hearings on the issue, giving at least fifteen days notice in a local newspaper.

Extraterritorial Planning Jurisdiction. A city which has been granted power to zone beyond its corporate boundaries (T.C.A. § 13-3-102) cannot zone outside of its UGB, regardless of the five mile limit. However, if the county has no zoning and the city has not received extra-territorial zoning authority under the statute cited above, then the municipality may zone beyond its city limits only with the approval of the county legislative body; this rule includes territory which is outside the city limits but inside the UGB. The county retains authority to enact zoning (T.C.A. § 13-7-101 *et seq.*) within a PGA, an RA, and a UGB (although presumably only that section of the UGB that is outside of municipal boundaries). The new law does not expand a county's zoning authority or enact state-wide zoning.

Formulation of Growth Plan. The first step in the formulation of a comprehensive growth plan is the formation of the coordinating committee.

Coordinating Committee. According to statute, the coordinating committee is composed of the following members:

- 1) County executive or designee confirmed by county legislative body.
- 2) Mayor of each municipality or designee confirmed by governing body.
- 3) One member appointed by municipally owned utility system with largest number of customers in the county.
- 4) One member appointed by non-municipally owned utility system with largest number of customers in the county.
- 5) One member to represent agricultural interests appointed by the county's soil conservation district.
- 6) One member appointed by the board of education with largest enrollment in the county.
- 7) One member appointed by the largest chamber of commerce, after consultation with all others in the county.
- 8) Two members appointed by the county executive to represent environmental, construction and homeowner interests.
- 9) Two members appointed by the mayor of the largest municipality to represent environmental, construction and homeowner interests.

The committee becomes effective September 1, 1998.

Goals and Objectives of a Growth Plan. A growth plan must at a minimum identify the three types of areas listed above, if they all exist within the county. A plan may also address other planning issues such as transportation, housing and economic development. After the plan is approved, all land use decisions by the planning commission must be consistent with the plan.

Formulation of Growth Plan. The committee recommends a growth plan and submits it to the county legislative body and governing bodies of each municipality for ratification no later than January 1, 2000. Cities and counties may recommend boundaries for inclusion in the growth plan after two public hearings (after fifteen days notice) on the proposed plan. In addition to input from local governmental entities, the committee is encouraged to use local planning services as well as the state's local planning office,

CTAS and MTAS. Before recommending the growth plan, the committee must hold two public hearings, giving at least fifteen days notice before each in a local newspaper.

Ratification of Growth Plan. County legislative bodies and municipal governing bodies must ratify or reject the growth plan within 120 days of submission; failure to act within this time is deemed to be ratification. A county or city rejecting the growth plan must state objections and reasons. If a city is completely surrounded by another municipality, the UGB for the surrounded city will be its corporate limits; it is not eligible to ratify or reject the growth plan.

Agreements Regarding Powers. Counties and cities are authorized to make agreements to refrain from exercising powers, including annexation and receipt of revenue. After five years agreements to refrain from exercising powers may be renegotiated or terminated upon 90 days notice. There are specific provisions regarding existing agreements, stating that annexation reserve agreements existing on the effective date of the act (May 19, 1998) are ratified, although provisions of the act still apply. In charter counties annexation reserve agreements in effect upon January 1, 1998, become the growth plan for the county. The act explicitly allows written contracts between municipalities and owners (developers) regarding annexation, validating those in existence on the effective date of the act.

Exceptions. In counties in which the population of the largest municipality comprises at least 60% of the population and in which there are no other cities over 1,000 (Madison and Montgomery), the planning commission of the largest municipality and the county planning commission, if one exists, perform the function of the coordinating committee. The mayor and county executive may jointly appoint additional members. In these counties the county legislative body may disapprove the proposed growth plan only by a 2/3 vote and only if it finds the committee acted arbitrarily and capriciously.

Dispute Resolution. Upon rejection of the growth plan by a city or county, the coordinating committee reconsiders and may recommend a revised plan. If the plan is still rejected, then any city or the county may declare an impasse. After an impasse is declared, the Secretary of State appoints a panel of three administrative law judges (or one if all parties agree); no member of the panel may have connections with the county or one of its cities. The panel first attempts to resolve the dispute through mediation. Next the panel proposes a non-binding resolution, giving the parties sufficient time to consider the proposal. If the non-binding resolution is rejected, the parties may submit final recommendations to the panel. The panel then adopts a growth plan in accordance with the law.

Throughout any of these steps the panel may consult with the University of Tennessee or other experts in planning. Costs of the process are divided among the parties, unless the panel finds bad faith or frivolous actions, when the costs may be assessed against that party. If a city or county fails to pay its share, the Department of Revenue deducts that amount from the county's or city's allocation of state shared taxes.

Ratification by the Local Government Planning Advisory Committee. No later than July 1, 2001, the completed growth plan is submitted to the Local Government Planning Advisory Committee. If the growth plan was formulated by the coordinating committee and ratified by the county and all cities, then the Advisory Committee grants approval of the plan automatically. In charter counties with annexation reserve agreements in effect on January 1, 1998 (Shelby), the Advisory Committee also approves the plan automatically. If the growth plan resulted from the dispute resolution process, then the Advisory Committee approves the plan if it complies with the law. If it does not, the committee makes changes necessary to bring the plan into compliance with the law. After approval, the committee forwards a copy to the county executive who files it in the register's office. There is no fee for this filing.

Effect of Growth Plan Approval on Qualification for State Grants. The act establishes incentives in specified state grant programs which are available to cities and counties after the growth plan is approved. Conversely, it also provides that cities and counties which fail to complete a growth plan by July 1, 2001, become ineligible for certain state grants until the growth plan is approved.

Amendment of Growth Plan. Unless there are "extraordinary circumstances," the growth plan remains in place for three years. After three years, a county or city may propose amendment by filing notice with the county executive and each mayor, who then reconvene the coordinating committee. The burden of proving the reasonableness of the change is on the party proposing it. Procedures for amendment are the same as for establishing the original plan.

Judicial Review of Growth Plan. A county, city, resident, or real property owner has standing to file a petition in the chancery court of the affected county to challenge the adoption of the growth plan. It must be filed within 60 days after final approval of the plan by the Local Government Planning Advisory Committee. The case is heard by the court without a jury, and the petitioner has the burden of proving that the plan was adopted in an illegal, arbitrary or capricious manner. The growth plan goes into effect in spite of the appeal unless the court orders otherwise. All suits in the same county are consolidated into one. If the court finds that the manner of adoption was illegal, then the growth plan does not go into effect, and the process begins again.

Joint Economic and Community Development Board. T.C.A. § 6-58-114. In addition to the coordinating committee which is formed to formulate a growth plan and any amendments to it, the law requires a board with representatives from both public and private segments of the community to engage in long-term planning and maintain communication among the various interest groups.

Composition. The final make-up of each board is to be established by interlocal agreement, but at a minimum must include the county executive, the mayor or city manager of each city in the county (in a county with multiple cities, the smaller cities may rotate for representation, according to interlocal agreement) and an owner of greenbelt property.

Executive Committee. The executive committee is to be selected by the entire board, but must consist of at least the county executive and the mayors of the larger municipalities.

Term of Office. The terms are to be determined by interlocal agreement, with a maximum of four years; all terms must be staggered except those for those of elected officials, whose terms of service on the board coincide with their terms of office.

Meetings. The full board must meet a minimum of four times a year, and the executive committee must meet at least eight times annually. Both bodies are subject to the open meetings law and are required to keep minutes and attendance.

Funding. Costs are shared jointly among participating governments according to a statutory formula based upon population. The board may accept donations and grants. It must adopt a budget by April 1 each year; if a participating government does not contribute its share, the board may establish sanctions. Before applying for any state grant, local governments must certify their compliance with these provisions.

Exception. If a county has previously formed a similar agency, it may apply to the Local Government Planning Advisory Committee for an exception to these provisions.

ANNEXATION

Annexation During Interim. T.C.A. § 6-58-108. During the interim period between the effective date of the law (May 19, 1998) and the approval of a growth plan, the following rules apply:

Ability of County to Contest Annexation by Ordinance. A municipality may annex by ordinance during the interim. However, the county has standing to challenge the annexation by disapproving of the action and receiving a petition from a majority of property owners in the affected area within 60 days after final passage of the annexation ordinance. To determine whether a majority of the property owners has signed the petition, the county assessor reviews the names and reports to the county executive within fifteen days. Each parcel is counted only once; a parcel with multiple owners is counted if the majority of the owners petition together. The county has 90 days after passage of the ordinance to file suit contesting the annexation. Trial is without a jury, and the burden of proof is on the county to show that the annexation is unreasonable.

Ability of Individual Owner to Contest Annexation. In addition to the procedure outlined above, during the interim an owner continues to have the right to contest an annexation under current law (T.C.A. § 6-51-103). In this procedure the municipality has the burden of proof to show that the annexation is reasonable, and the petitioner may request a jury trial.

Annexations Effective 90 Days After Passage. If not stayed by the court, an annexation ordinance becomes operative 90 days after final passage.

Corridor Annexation. During the interim a city may not annex a narrow strip of property, including a highway, railway, easement or other corridor, unless it meets one of the following exceptions:

- 1) The annexation also includes all parcels on at least one side of the corridor;
- 2) The county legislative body approves the annexation (required if the annexed territory has no residents); or
- 3) The owners at the end of the corridor petition for annexation and meet all of the following conditions:
 - a. They agree to pay for necessary infrastructure improvements;
 - b. The property totals three acres or more;
 - c. The property is within one and a half miles of existing city limits; and
 - d. The annexation is not an extension of a previous corridor annexation

Annexation Outside County Boundaries. After the effective date of the act (and apparently continuing after the growth plan is approved), a city may not annex territory outside the county in which the city hall is located unless it meets one of the following exceptions:

- 1) On November 25, 1997, more than 7% of the city's population resided in the second county;
- 2) The municipality receives approval from the county legislative body in the second county;
- 3) On January 1, 1998, the municipality provided sewer services to at least 100 customers in the second county; or
- 4) The annexation ordinance was adopted on final reading before the effective date of the act (May 19, 1998) and the property in the second county is to be used only for industrial purposes.

Annexation after Approval of Growth Plan. T.C.A. § 6-58-111. After the growth plan is approved, different requirements for annexation become effective. These are summarized below.

Annexation Inside the UGB. A municipality may use the methods previously authorized to annex property inside the UGB, including annexation by ordinance and by referendum. However, in a change from previous law, a challenge to an annexation ordinance inside the UGB is heard by the judge with no option of a jury trial; the burden of proof is on the challenger to prove that the annexation is unreasonable.

Annexation Outside the UGB. A municipality may annex outside its UGB only by one of two methods:

- 1) Amendment to the UGB - The procedures used to set and approve the original boundary, as explained above, must be repeated to change the boundary.
- 2) Referendum.

Distribution of Taxes after Annexation. T.C.A. § 6-51-115. When a city annexes property which generates wholesale beer taxes or local option sales taxes, the amount of revenue

produced at the time of the annexation continues to go to the county for a period of 15 years. Any increases over this amount are distributed to the annexing municipality. Note that this does not affect the distribution of the first half of the local option sales tax which continues to go to education funding.

Formula for Distribution. If the business operated for a full twelve months before annexation, the county receives the monthly average for that period. If the business operated for at least one full month but fewer than twelve months before annexation, the county receives the average amount of each full month of operation. If the business operated for less than a month before annexation, or if it began operation within three months of annexation, then the revenue for the first three months is averaged and the county receives that amount.

Exceptions. There are several exceptions to the distribution formula. If the wholesale beer tax or the local option sales tax is repealed revenue amounts from the repealed tax will end; similarly, if the distribution to municipalities is reduced by the General Assembly, revenue amounts will be decreased proportionally. Finally, if a business closes or relocates, thereby reducing tax revenues, the city may petition to the Department of Revenue no more than once annually for a reduction in amounts. A county may voluntarily waive rights to the revenue.

County Responsibility. Upon annexation, each county is responsible for identifying tax-producing properties and providing a list of them to the Department of Revenue.

Plan of Services. T.C.A. § 6-51-102. The plan of services requirement has been strengthened for all annexations occurring after November 25, 1997. Before annexing any territory, whether the annexation occurs before or after the approval of the growth plan, a municipality must adopt a reasonable plan of services which outlines the services to be provided and their timing.

Requirements for a Plan of Services. The following services must be included, although the plan may exclude those being provided by another entity, except the county:

- 1) Police protection
- 2) Fire protection
- 3) Water service
- 4) Electrical service
- 5) Sanitary sewer service
- 6) Solid waste collection
- 7) Road and street construction and repair
- 8) Recreational facilities and programs
- 9) Street lighting
- 10) Zoning services

It must include a reasonable implementation schedule for delivery of services in the annexed territory which are comparable to those delivered to all citizens of the municipality.

Public Comment on the Plan. Before adoption, the plan must be submitted to the local planning commission, which has 90 days to comment. The municipality must also hold a public hearing after fifteen days notice.

No New Annexations for Cities in Default. A municipality may not annex any new territory if it is in default on any prior plan of services.

Retroactive Application for Annexations not Final on November 25, 1997. For any annexation which was not final on the above date, the municipality must adopt a plan of services that complies with the requirements of the new law. It must be prepared within 60 days.

Interim Standing to Contest Reasonableness of a Plan of Services. T.C.A. § 6-51-102. The county has standing during the interim period before the approval of the growth plan to challenge the reasonableness of any plan of services which was adopted after May 19, 1998 (the effective date of the act). In order to obtain standing the county must be petitioned by a majority of landowners (by parcel) in the annexed territory. The procedures are the same as those outlined above for annexation challenges. The petition must be brought within 60 days of adoption of the plan, and the county must file suit within 90 days. If the court finds the plan unreasonable, the municipality may submit a revised plan within 30 days or may abandon the plan, in which case the city may not annex any of the same territory for 24 months. Also, a city whose plan has been found unreasonable may not annex by ordinance until in compliance. If the court finds the plan reasonable, it takes effect 31 days after judgment unless there is an appeal.

Amendment and Enforcement of Plan of Services. T.C.A. § 6-51-108.

Progress Report. Six months after the plan is adopted and then annually until it is fully implemented, the city must publish a report on the progress it has made in fulfilling the plan and must hold a public hearing on the report.

Amendment. The plan of services may be amended only for one of the following reasons:

- 1) It is necessary because of natural disaster, war, terrorism, or other unforeseen circumstances beyond the city's control;
- 2) The amendment makes no real change to the type or level of services and does not substantially delay the services; or
- 3) It has received written approval of the majority of landowners (by parcel) in the affected area.

Before amendment, the city must hold a public hearing after fifteen days notice.

Standing to Enforce Plan of Services or Challenge Amendment of Plan. An aggrieved property owner has standing to enforce the plan any time after 180 days after annexation by ordinance, and to contest the amendment of the plan within 30 days after the amendment is adopted. If an amendment is found unlawful, it is void and the prior plan of services is reinstated. If the court finds that the city has failed in a substantial way to comply with its plan of services, the court may allow more time if the failure was

because of natural disaster, war, terrorism, or unforeseen circumstances beyond the city's control. If one of these conditions does not apply, the court must compel the city to provide the services as set out in the plan; it will establish a timetable for their implementation, and prohibit the city from any further annexations until the plan is implemented. The city must pay costs of the suit if the court finds that the city has unlawfully amended a plan or failed without cause to comply with a plan.

INCORPORATION T.C.A. § 6-58-112.

Incorporation Before January 1, 1999. During the period between May 19, 1998 and January 1, 1999, a new city must continue to meet all requirements (distance, population, etc.) in existing law, and must also impose a property tax at least equal to the amount the city will receive in state shared taxes. The law enacted an exception for any town which held an incorporation election between January 1, 1996 and November 25, 1997, under specific statutes subsequently declared unconstitutional. T.C.A. 6-58-108(f). However, this exception was subsequently held to be unconstitutional.

Incorporation after January 1, 1999. T.C.A. § 6-58-112. After this date new municipalities may only be created inside a PGA. Any new municipality must enact a property tax at least equal to its share of state taxes and must adopt a plan of services within six months of incorporation. Before an incorporation election may be held, the county legislative body must approve the city limits and UGB for the proposed municipality.

Exception to Prohibition Against New Incorporation Within 5 Miles of Large City. The law provides an exception to the rule prohibiting any new incorporations within five miles of a city over 100,000 (TCA 6-1-201), allowing such an incorporation if the governing body of the existing city, by a 2/3 vote, proclaims no interest in annexing the territory.

CONSOLIDATION OF CITY AND COUNTY GOVERNMENTS T.C.A. § 7-2-101.

As a change from previous law, the new statute allows creation of a consolidation commission upon the petition of 10% of the county's voters (previous law required the county and principal city to call for a consolidation commission). The act also specifies procedures for appointment to the commission (under one method, the county executive appoints county members, subject to confirmation by the county legislative body).

OTHER PROVISIONS

Monitoring. T.C.A. § 6-58-113. The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) will monitor the implementation of the law and report its findings to the legislature.

Law Inapplicable to Annexations Pending on November 25, 1997. T.C.A. § 6-58-115. The new law does not apply to annexation ordinances which were pending but not final as of November 25, 1997.

Interference with Agricultural Use of Land. T.C.A. § 6-54-126. A municipality may not use its zoning powers to interfere with the agricultural use of land. This prohibition is effective as long as the land is used for agricultural purposes, regardless of whether the property is transferred.

Metro Provisions. T.C.A. § 6-51-118. The law does not apply to metropolitan counties in which any part of the general services district is annexed into the urban services district (Davidson).

No New School Systems. T.C.A. § 6-58-112. The law prohibits new school systems after the effective date.

Effective Date - May 19, 1998.

Other Planning Provisions

In addition to the recent law discussed above, there are also other planning provisions in Tennessee statutes. The Department of Economic and Community Development has created and defined the boundaries of other planning regions, which are drawn without regard to county lines or other existing boundaries. T.C.A. § 4-3-701 *et seq.* For each planning region the department also creates a regional planning commission, or a municipal planning commission may direct regional planning under certain circumstances. T.C.A. §§ 13-3-101, 13-3-102. In actual practice, most planning regions consist of a single county.

Membership of Planning Commission. Except for planning regions consisting of a single county, the Department of Economic and Community Development determines the number of members (not less than five nor more than fifteen) on any regional planning commission. T.C.A. § 13-3-101. Before a member can be designated by the department, he or she must first be nominated in writing by the county executive or the chief elected officer of a municipality within the planning region. The nominations for newly-created or vacant positions on the commission must be received by the department within thirty days after the position becomes available. As a result of amendments passed in 1995, the members of planning commissions in single county planning regions are chosen by the county executive, subject to the approval of the county legislative body. Members of local legislative bodies may serve; however, members from county and municipal legislative bodies must be fewer in number than a majority of the commission. And, with a few exceptions, public employees and officeholders must also make up less than a majority. T.C.A. § 13-3-101.

Each regional planning commission is to elect a chair from among its appointed members. T.C.A. § 13-3-103. Formerly all planning commission members were required to serve without compensation, although they were reimbursed for necessary travel and other expenses while engaged in commission work. The 1993 amendments, however, allow the legislative body of a county or municipality in which the commission operates to establish compensation for regional planning commission or zoning board members. T.C.A. § 13-3-101. The statutes do not specify times or places for planning commission meetings, but they do address terms of office as well as procedures for removal and vacancies. T.C.A. § 13-3-101.

Duties and Powers of Planning Commission. The regional planning commission is charged with several specific duties. It is required to adopt a general plan for the physical development of the

region, copies of which must be certified to the Department of Economic and Community Development and to the legislative bodies of each county and municipality in the region. T.C.A. §§ 13-3-301, 13-3-304. Furthermore, the planning commission is to advise county and municipal governing bodies in such areas as public improvement programs and construction of roads, bridges, and other public structures. The regional planning commission should coordinate its efforts with those of any municipal planning regions within its area, cooperate with authorities in neighboring states and regions, and, in general, perform any functions needed to promote regional planning. T.C.A. § 13-3-104.

One of the most important duties of the regional planning commission involves plat approval. After the commission has developed and filed a regional plan, any subdivision, except one lying inside municipal borders, must be approved by the regional planning commission before it may be recorded by the county register. T.C.A. § 13-3-402. A similar requirement is found in T.C.A. § 13-4-302 with regard to municipal planning. What constitutes a subdivision is defined in T.C.A. §§ 13-3-401(4) and 13-4-301(4). A representative of the commissioner of the Department of Environment and Conservation (usually the county health officer) must approve subdivision plats when subsurface sewage disposal is to be used before the planning commission approves the plat. T.C.A. § 68-221-407. Any county register who records a plat of a subdivision without prior approval by the planning commission is guilty of a misdemeanor. T.C.A. §§ 13-3-402, 13-3-302. A plat may be submitted only by the owner of the land (as defined in T.C.A. § 13-3-402) or by a governmental entity, and all plats must include the most recently recorded deed book and page numbers for all property included in the plat. T.C.A. § 13-3-402. A plat must contain the personal signature and seal of a registered land surveyor or a registered engineer before the plat is eligible for filing in the register's office. T.C.A. § 66-24-116.

All of these matters -- platting regulations, road and utility requirements, and procedures for submission of plats -- are addressed more specifically in T.C.A. § 13-3-403 *et seq.* However, these provisions do not apply to any subdivision plat registered prior to February 14, 1935, or to land partitioned by the court or by the owners among themselves. T.C.A. §§ 13-3-407, 13-3-408. Furthermore, these sections do not repeal or impair private acts relating to planning requirements. T.C.A. § 13-3-409.

In order that the regional planning commission may accomplish its functions, it is granted certain statutory powers. One of the most significant is the authority to adopt regulations governing the subdivision of land within its jurisdiction; these regulations provide the requirements for plat approval. Also, the planning commission is entitled to relevant information from local officials, and its members may enter upon property for examination or survey. T.C.A. § 13-3-104. The commission may hire employees, with some restrictions, and it may contract with planners and other experts. Expenditures of the commission are governed by T.C.A. § 13-3-103. Under certain circumstances the commission also has the power to combine substandard lots under one owner into one standard lot. T.C.A. § 13-3-402.

Community Planning

In addition to regional planning, the General Assembly has also provided means through which unincorporated communities may adopt unified planning strategies. T.C.A. §§ 13-3-201 through 13-

3-203. Any region under ten square miles in area and with more than 500 inhabitants may petition the Department of Economic and Community Development to create a community planning commission, which has all the powers and duties of regional and municipal planning commissions. T.C.A. §§ 13-3-201, 13-3-202.

County Zoning

Zoning Regulation. The county legislative body is authorized to regulate land areas outside incorporated municipalities in such matters as the location and size of buildings, the percentage of a lot which may be occupied, the size of yards, courts, and other open spaces, the density and distribution of population, and the uses of buildings and land. T.C.A. § 13-7-101. To carry out this authority the county legislative body may implement the zoning plans created by the regional planning commission.

After a planning commission certifies a zoning plan, including both the text of a zoning ordinance and a zoning map, then the county legislative body must hold a public hearing on the plan. Statutory requirements regarding notice, publication, and amendment procedures must be observed before the zoning ordinance can take effect. T.C.A. §§ 13-7-104, 13-3-105.

In formulating a zoning scheme the regional planning commission may develop a single plan or successive plans for parts of the county it deems appropriate for development. These plans divide the territory of a county lying outside unincorporated municipalities into zoning districts. All regulations must be uniform for each class of building throughout the district, but the regulations in one district may differ from those in another. If the county legislative body chooses to enact the zoning plan for more or less territory than that encompassed in the plan certified by the planning commission, then it must resubmit the plan to the commission for approval. If the revised plan is disapproved by the commission, then at least two-thirds of the entire county legislative body membership must vote for its approval for the revision to pass. T.C.A. § 13-7-102.

Amendments. The county legislative body is authorized to amend zoning regulations, although any amendment must first be submitted to the regional planning commission, which has thirty days to pass the amendment or to offer suggestions. If the planning commission disapproves, the amendment becomes effective only through a subsequent majority vote of the county legislative body. Before final adoption, the county legislative body must hold a public hearing, giving at least fifteen days notice (thirty days in Shelby County) in a newspaper of general circulation in the county and including a summary of the proposed amendment. T.C.A. § 13-7-105.

Board of Zoning Appeals. The county legislative body is also authorized to create a board of zoning appeals to make special exceptions to zoning regulations, assist in settling boundary line disputes, interpret zoning maps, and consider similar questions. T.C.A. §§ 13-7-106 through 13-7-109. The county legislative body usually appoints from three to five regular members of the appeals board, along with one or more associate members who can sit for regular members under some temporary disability. A joint board of zoning appeals may be appointed by two or more counties. Compensation and length of terms are determined by the county legislative body, within certain statutory guidelines. Vacancies are filled for the unexpired term, and in the same manner as the original appointments. The county legislative body may remove any member for cause upon written charges and after a public

hearing, and may specify rules governing organization, procedure, and jurisdiction of the board. T . C . A .
§ 13-7-106. The board of zoning appeals may also adopt supplemental rules of procedure if these are consistent with state statutes and rules adopted by the county legislative body. T.C.A. § 13-7-107.

County Building Commissioner (Building Inspector). The county is authorized to establish the position of county building commissioner, who is appointed by the county executive and confirmed by the county legislative body. 2000 Public Chapter 308. The building commissioner considers building permit applications and issues permits to those who comply with zoning regulations. Before any structure within the region is built, altered, or used, it must fully conform to all zoning regulations, and this compliance must be evidenced by a building permit. T.C.A. § 13-7-110. Building permit rules may also be enacted by private act. Any grant or refusal of a permit, or any other decision of the building commissioner, may be appealed to the board of zoning appeals. T.C.A. § 13-7-108.

Special Zoning Provisions. Finally, the county legislative body is also authorized to establish a historic zoning commission (T.C.A. § 13-7-401 *et seq.*), as well as special zones for flood control and solar energy systems. T.C.A. § 13-7-102. However, these special zoning statutes do not apply to land used for agricultural purposes, as long as any structures on the land are incidental to the agricultural purpose, unless the property is near state federal-aid highways, public airports, or public parks. T.C.A. § 13-7-114.

Enforcement and Application. Any person or company who violates zoning regulations is guilty of a misdemeanor, and each day the violation continues constitutes a separate offense. The county legislative body, attorney general, district attorney general, county building commissioner, or neighboring property owner (who would be specially damaged) may initiate appropriate action to prevent or remove the unlawful construction or use. T.C.A. § 13-7-111. Also, under the 1995 County Powers Act, the county legislative body has the authority to establish monetary penalties for violation of lawful county regulations, including zoning regulations. T.C.A. § 5-1-121.

The provisions of T.C.A. § 13-7-101 *et seq.* specify that these zoning provisions do not repeal or modify any private act enacted before 1935 which relates to zoning regulations. T.C.A. § 13-7-115. However, whenever a private act imposes more rigorous standards than those required by statute, then the private act will govern. Conversely, whenever the statute is more stringent, then the provisions of the statute prevail over those of the private act. T.C.A. § 13-7-112.

Municipal Zoning Outside City Limits

A municipality has statutory authority to enact zoning regulations for territory adjacent to but outside of its boundaries if that area has no zoning already in force. T.C.A. § 13-7-302. First the municipal planning commission must also be designated as the regional planning commission (T.C.A. § 13-3-102), and the municipality must file notice of intent with the county executive at least six months before the final enactment of the ordinance. T.C.A. § 13-7-303. If the county subsequently adopts zoning covering that territory, the municipal zoning is automatically superseded and repealed. T.C.A.

§ 13-7-306. According to the new planning law discussed above, a city may not zone outside its urban growth boundary, once this boundary is in place. T.C.A. § 6-58-106(d).

Adoption of Building Codes

The county legislative body may enact a resolution which adopts by reference any prepared building, plumbing, or other code, or any federal rules and regulations. At least ninety days before the adoption of a resolution incorporating a code by reference, three copies of the code must be filed in the office of the county clerk. No resolution which adopts a code by reference will be effective until it is published in a newspaper of general circulation. T.C.A. § 5-20-102. Any code adopted by reference must be retained on file as a public record. T.C.A. § 5-1-116. These provisions apply only to the unincorporated area of a county and to those incorporated cities and towns within the county which do not elect to adopt their own codes regulating the same subject areas. T.C.A. § 5-20-106.

The adopting resolution may also incorporate by reference the administrative provisions of any code, or may include in the adopting resolution any suggested administrative provisions found in a code. If a code does not contain administrative provisions, the administrative provisions of another code may be adopted and included in the resolution. Any official within the existing framework of county government may be charged with enforcing the code, including but not limited to officials who administer zoning regulations. T.C.A. § 5-20-103. The penalty clause contained in such a code may not be incorporated by reference, but those who violate its provisions are guilty of a misdemeanor. T.C.A. § 5-20-105. Additional enforcement power is vested in the county attorney or other designated county official who may, in addition to other remedies provided by law, obtain an injunction to prevent violation of any provision of the code. T.C.A. § 5-20-104.

Industrial and Economic Development

Industrial Development Corporations. Industrial development corporations were authorized by the Tennessee General Assembly to maintain and increase employment, increase agricultural and industrial production, and reduce pollution. Their powers and duties are set forth in T.C.A. § 7-53-101 *et seq.* These statutes expressly state that their provisions are to be broadly construed to further the health, welfare, and safety of citizens, so these corporations can figure prominently in a county's planning activities. (For an expanded discussion regarding the formation of the industrial development corporation and the issuance of bonds, see Chapter 8.)

Special Assessments, Impact Fees, and Adequate Facilities Taxes. In recent years local governments, especially those in counties experiencing heavy growth, have looked for ways by which those benefitting from the growth could also pay for the increased governmental costs resulting from that growth. There are three main methods by which a local government may make an assessment against property which the owner wishes to develop: special assessments, impact fees, and privilege taxes.

Special Assessments. These are charges levied against specific parcels of property to recoup part or all of the costs of improvements which directly benefit that property: “The differences between a special assessment and a tax are (1) a special assessment can be levied only on land for special purposes; (2) a special assessment is based wholly on lands benefited.” *West Tennessee Flood*

Control & Soil Conservation Dist. V. Wyatt, 247 S.W.2d 56 (Tenn. 1952). Counties are authorized to levy special assessments by the County Powers Act. T.C.A. §5-1-118.

Impact Fees. These fees are a means of regulating new development in a local government. The intent of the fee is to place the financial burden of new growth on areas in which the growth has occurred. The level of the fee must be related to the needs of new development, and revenues generated by the fee should be earmarked for investment in the growth areas. There is no specific statutory authority under general law for counties to impose impact fees; therefore, they may be imposed only by private act.

Adequate Facilities Taxes. These are privilege taxes levied upon the privilege of construction or development of property. The primary difference between an impact fee and an adequate facilities tax is one of intent: it is a tax if the primary purpose is to raise revenue, but it is a fee if the purpose is for the regulation of some activity under the government's police power. *Memphis Retail Liquor Dealer's Ass'n Inc. v. City of Memphis*, 547 S.W.2d 244 (Tenn. 1977). The issue of whether a program is a tax or fee becomes significant in determining the level of scrutiny with which courts will look at the program. Since taxes are not regulatory actions, they do not have to meet the same standards as impact fee programs.

Since local governments can more easily obtain enabling legislation in Tennessee through private acts, this type of taxation may be easier for local governments to accomplish here than in other states where local governments have been more prone to resort to impact fee programs. The revenues from these taxes go into the fund or funds designated by the private act. While they may often be designated for expenditure on expanding capital facilities for public works, it is neither required nor, as a rule, desirable to earmark them for spending only in the areas where they were collected.

CHAPTER 17

MISCELLANEOUS

Open Meetings Act

Tennessee's Open Meetings Act, commonly referred to as the “Sunshine Law,” is found in T.C.A. § 8-44-101 *et seq.* These statutes require all meetings of any governing body, as defined in the statute, to be open to the public at all times. Adequate public notice of all regular and special meetings is required. T.C.A. § 8-44-103. Any action taken in a meeting which violates these provisions is void. T.C.A. § 8-44-105.

The Sunshine Law provisions have a broad scope: the Tennessee Supreme Court has held that this act was intended to apply to “any governmental board, commission, committee, agency or authority whose members have authority to make policy or administrative decisions.” *Dorrier v. Dark*, 537 S.W.2d 888 (Tenn. 1976). Included, for example, are planning commission meetings (Op. Tenn. Att’y Gen. 88-132 (July 29, 1988)), conferences between a public body and its attorney, except those concerning pending litigation (*Smith County Educ. Ass's v. Anderson*, 676 S.W.2d 328 (Tenn. 1984)), local school board meetings (*Dorrier*), and tenure hearings (*Kendall v. Board of Educ.*, 627 F.2d 1 (6th Cir. 1980)).

The statute does state that a chance meeting between two or more members of a public body should not be considered a public meeting subject to the terms of the act. However, the same statute goes on to warn that chance meetings shall not be used to deliberate public business in circumvention of the spirit of this act. T.C.A. § 8-44-102. Because of the broad interpretation with which both the courts and the legislature have applied this act, the attorney general's office offers the following advice: “Two or more members of a governing body should not deliberate toward a decision or make a decision on public business without complying with the Open Meetings Act.” Op. Tenn. Atty. Gen. 88-169 (Sept. 19, 1988). Questions concerning the application of this law may be referred to the county attorney or the CTAS staff.

County Records

Open Records Requirement. All county records must be open for personal inspection by any citizen of Tennessee during business hours of the various county offices. County officials in charge of these records may not refuse the right of any citizen to inspect them, unless another statute specifically provides otherwise (T.C.A. § 10-7-503) or they are included in the list of specific records which are to be kept confidential under T.C.A. § 10-7-504 or some other legal authority. A citizen denied access to a public record is entitled to file a petition for inspection, either in the chancery court of the county in which the records are located or in any other court of that county having equity jurisdiction. The county official denying access to the record has the burden of proof to justify the reason for nondisclosure. If the court directs disclosure, the county official shall not be held criminally or civilly liable for the release of the records, nor shall he or she be responsible for any damages caused by the release of the information. If the refusal to disclose the record is willful, the court may assess all

reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the county official. T.C.A. § 10-7-505.

For county governments, one of the most significant recent additions to the class of records that are confidential came in an amendment to § 10-7-504 that passed in 1999 to protect certain information regarding state, county, municipal and other public employees. An employee's unpublished telephone numbers, bank account information, social security numbers, driver's license information (except where driving is a part of the employee's job) and similar information for the employee's family and household members are confidential. Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the non-confidential portion of the file or document.

Storage and Disposition of County Records. In recognition of the problems that counties encounter with records disposition, the general assembly has created statutory procedures for the storage or disposition of county records. T.C.A. § 10-7-401 *et seq.* Records management is an important function of each county office. Some records must be permanently preserved and made available for public use because of their administrative, legal, fiscal, or historical value. Other records, lacking these qualities, are considered of temporary value.

Each county is required to establish a County Public Records Commission composed of six members, including a member of the county legislative body, a judge of a county court of record, and a genealogist, all appointed by the county executive and confirmed by the county legislative body. The county clerk, county register, county historian and county archivist (if the county has such a position) are ex officio members. This commission has the authority to promulgate reasonable rules and regulations pertaining to the making, filing, storage, exhibiting, and copying of records. T.C.A. § 10-7-401. Questions regarding the storage, retention, or destruction of county records may be addressed to the county public records commission.

The schedules of retention and/or disposition for records of each county office are set out in a manual published by The University of Tennessee County Technical Assistance Service as required by T.C.A. § 10-7-404. This manual, entitled *Records Management for County Governments*, offers a guide for records disposition on which the official may rely in scheduling records for destruction, thus avoiding the expense and inconvenience of keeping obsolete records as well as making space available for current and permanent value records. However, both temporary value records and permanent records must generally have the approval of the county public records commission before they be destroyed. Permanent value paper records must be reproduced on another medium, such as microfilm or CD ROM disk (in accordance with state regulations), before the original record may be destroyed, if at all. Original records may be required to be transferred to the state library and archives or another institution. T.C.A. §§ 10-7-404, 10-7-406, 10-7-413, 10-7-414.

Computer Records Storage Requirements. Any information required to be kept as a record by any government official may be maintained on computer storage media instead of bound books or paper records if the following conditions are met:

- (1) the information is available for public inspection, unless it is a confidential record according to law;

- (2) due care is taken to maintain any information that is a public record during the time required by law for retention;
- (3) all daily data generated and stored within the computer system is copied to computer storage media daily, and the newly created computer storage media that is more than one week old shall be stored at a location other than at the building in which the original is maintained; and
- (4) the official can provide a paper copy of the information when needed or requested by a member of the public.

T.C.A. § 10-7-121.

Also, upon the promulgation of proper rules by the secretary of state, county officers may destroy or archive elsewhere, as appropriate, original paper records upon reproduction onto computer storage media such as CD ROM disks after following certain procedures and standards and having the destruction or record transfer approved by the county public records commission and/or the state library and archives. T.C.A. § 10-7-404.

Remote Electronic Access to County Records

Each county official has the authority to provide computer access and remote electronic access for inquiry only to information contained in the records of the office which are maintained on computer storage media in that office, during and after regular business hours. However, remote electronic access to confidential records is prohibited. The official may charge a fee to users of information provided through remote electronic access, but the fees must in a reasonable amount determined to recover the cost of providing this service and no more. The cost to be recovered must not include the cost of electronic storage or maintenance of the records. Any such fee must be uniformly applied. The official offering remote electronic access must file with the Comptroller of the Treasury a statement describing the equipment, software and procedures used to insure that this access will not allow a user to alter or impair the records. This statement must be filed thirty days before offering the service, unless the official has implemented such a system before June 28, 1997. T.C.A. § 10-7-123.

Tennessee Electronic Commerce Act

In 2000, the legislature enacted a new law which takes remote electronic access to county records to the next logical level. The Tennessee Electronic Commerce Act, 2000 Public Chapter 841, authorizes county officers and public officials to conduct business transaction by electronic means and determine whether, and the extent to which, their offices will send and receive electronic records and electronic signatures. The act does not require a county official to communicate or conduct any business by electronic means. However, it requires any official that chooses to implement an electronic business system, that provides for sending and receiving electronic records with electronic signatures, to file a statement with the Comptroller of the Treasury at least thirty days prior to offering such service. The statement must describe the hardware and software used for the system, the policies and procedures for operating it, the internal controls for protecting the security and integrity of the system, the personnel responsible for it, the types of records and transactions to be conducted electronically, the transaction and record authorization process, the electronic signatures used by the system, estimated costs of the system, and expected benefits and/or cost savings of conducting business by electronic

means. Between twelve and eighteen months after implementation of the system, the official implementing the system shall provide a post-implementation review of the system to the Comptroller. It shall include an assessment of the system used by the official, responses from a survey of users of the system, and any recommendations for improvements. In addition to existing requirements for maintaining public documents, the act creates additional standards for an electronic records system. Under the act, electronic records must be available for public inspection unless they are confidential according to law. Due care must be taken to maintain an electronic record for the required retention period for the public information in the record. Electronic records must be copied to computer storage media no less frequently than daily. Backups must be stored at a location other than the building where the original data is maintained. The official must be able to provide a paper copy of the records when needed or requested by a member of the public.

Geographic Information Systems Records

In 2000, the General Assembly also passed Public Chapter 868 to authorize counties to charge increased fees to persons purchasing copies of a certain type of record for commercial purposes. Under the new law all state and local governments maintaining Geographic Information Systems (GIS) are authorized to charge enhanced fees for reproductions of public records that have commercial value and include a computer generated map or similar geographic data. Prior to the passage of this act, local governments could only charge for the actual costs of reproduction of such data (usually a minimal charge for the costs of the computer disk or other copying media) unless they were in one of five counties designated by narrow population classes that had specific authorization to charge higher fees under the law. Under 2000 Public Chapter 868, local government entities that have the primary responsibility for maintaining a GIS system can also include annual maintenance costs and a portion of the overall development costs of the GIS system in the fees charged to users who want to purchase a copy of the information for commercial use. If the system is maintained by the county, the county legislative body establishes the fees. If GIS is maintained by a utility, the board of directors establishes the fees. Two groups are exempt from the higher fees: individuals that request a copy of the information for non-business purposes; and, members of the news media that request the information for news-gathering purposes. These exempt parties will be charged only the actual costs for reproducing the data. The development costs which may be recovered by the fees charged to commercial users are capped at 10% of the total development costs unless some additional steps are taken. For local governments, the local legislative body and the state Information Systems Council must approve a business plan that explains and justifies the need for additional cost recovery above 10%. Even with the approval of such a plan, development cost recovery cannot exceed 20%. However, these limits do not apply to annual maintenance costs which may be fully recovered in the fees charged to commercial users. The recovery of development costs of a system is subject to audit by the Comptroller of the Treasury. Once the allowable portion of the development costs of the system have been recovered by the additional fees charged to commercial users, then the fees must be reduced to cover only the costs of maintaining the data and ensuring that it is accurate, complete and current for the life of the system.

Credit Cards

In the 2000 legislative session the Tennessee General Assembly passed authorization for governmental entities, including counties, to accept credit card or debit card payments for all

funds received. 2000 Public Chapter 706. The collecting officer must collect a processing fee equal to that charged by the card company, not to exceed 5%. The collecting officer may also collect a service charge, in the amount allowed for a bad check, from the card holder if the card is not honored by the issuing company; this additional service fee may not be charged if the card is refused while the holder is present and at the time the transaction is processed. Use of a card may not result in a reduction of the amount of the debt owed to the governmental entity.

Buildings and Property

Purchase, Sale, and Lease of County Property. Counties are statutorily authorized to acquire and hold property for county purposes. They may also make contracts governing its management, control, and improvement and may also dispose of their properties. T.C.A. § 5-7-101; Op. Tenn. Att’y Gen. 87-133 (Aug. 5, 1987). Counties have the authority to levy taxes to build, extend, or repair county buildings. T.C.A. § 5-5-122.

Counties are also authorized by T.C.A. § 7-51-901 *et seq.* to enter into long and short-term contracts, leases, and lease-purchase agreements. Long-term contracts are specifically authorized by statute, although lease terms for capital improvement property may not exceed forty years or the useful life of the property, whichever is less. T.C.A. § 7-51-902. When the term of the contract, lease, or lease-purchase agreement is less than five years, the agreement must be approved by a resolution of the county legislative body. If the agreement is for a term greater than five years, county legislative body approval is also required, and public notice of the proposed contract must be given at least seven days prior to the meeting at which it is to be considered. T.C.A. § 7-51-904.

Libraries. The legislative body of any county and/or the governing body of any incorporated city or town has the power to establish and maintain a free public library, give support to any free public library already in existence, contract with another library for library service for its citizens, or enter into contractual agreements with one or more counties or cities for joint operation of a free public library. T.C.A. § 10-3-101 *et seq.* To fund these services a county may levy a property tax or may use funds raised for general county or municipal purposes. Libraries established under these statutes must be free to all inhabitants of the county and/or city; the city or county may allow use of the library by those residing outside its territorial boundaries upon such terms as it may deem proper. T.C.A. § 10-3-107.

If two or more counties have qualified for participation in the state's multi-county regional library program, have been recognized as a region by the State Library and Archives Management Board, and have made the minimum local appropriation of funds required by the management board, then they may execute contracts with each other to create a regional library board to administer the library services within the region. The State Library and Archives Management Board manages regional libraries, whose employees are employees of the state. After the governing body of a county authorizes participation, municipalities within the county may also participate in the regional library service as long as the county participates. Larger single counties may also constitute a region upon recognition by the State Library and Archives Management Board by executing a contract between the county and one or more cities within the county. T.C.A. § 10-5-101. The formation and creation of these boards is not mandatory for any county. T.C.A. § 10-5-107.

Abandoned Personal Property. A county may have unclaimed or apparently abandoned funds left in accounts in county offices from several sources. All property held for the owner by any court (including a federal court), public corporation, public authority or agency, public officer, or a political subdivision which has remained unclaimed by the owner for more than one year is presumed abandoned. Exceptions to this rule include property in the custody or control of any state or federal court in any pending action, as well as property which is otherwise disposed of by law. Property described above, without regard to any activity or inactivity within the past one year, is also presumed abandoned if the owner is known to the holder (county) to have died leaving no one to take his or her property by will or by intestate succession. T.C.A. § 66-29-110.

County offices holding funds or other tangible or intangible property which is presumed abandoned must file a report containing the required statutory information with the state treasurer before May 1 of each year. All unclaimed funds and intangible property presumed abandoned must be delivered with the report to the treasurer. Tangible property must be held for 120 days awaiting further instructions from the treasurer, or, absent those, delivered to the treasurer at the end of that time. T.C.A. § 66-29-115. Any person delivering property to the treasurer is relieved of liability in respect to that property. If someone submits a claim to the county for property already delivered to the treasurer, then the county may pay the claim, and the treasurer will reimburse the county. T.C.A. § 66-29-116.

Within 120 days of filing the report, the holder of the property must use all diligence to find the owner, and must send written notice to the apparent owner at his last known address. The holder must also maintain a record of the last known address for ten years. T.C.A. § 66-29-113. After the reports are submitted, the treasurer is required to publish a list of the names and last known addresses of the apparent owners. Publication should be done in a manner designed to inform owners that their property has been reported and where further information may be obtained. T.C.A. § 66-29-114.

At the request of any local government whose yearly total for abandoned property exceeds \$100, all unclaimed funds which have been held by the treasurer for at least eighteen months, less administrative costs, are returned. The funds go into the county general fund, except those necessary to maintain a sufficient amount in the unclaimed property accounts to insure prompt payment of any claims. T.C.A. § 66-29-121. If a person claims an interest in property that has been returned to the county from the state, and the claim is allowed, that person receives the property without deduction for administrative costs or service charges. The county must submit an annual report of the claims received on a form provided by the treasurer; this report is to be filed before September 1, and should include claims received as of the previous June 30. T.C.A. § 66-29-123.

County officials who fail to carry out their responsibilities regarding unclaimed property may be subject to sanctions. First, the treasurer may examine the records of any person whom the treasurer believes may have failed to file the required reports. T.C.A. § 66-29-127. Any person who fails to report abandoned property, or to perform other required duties, shall be fined \$25 for each day the report is withheld, but not more than \$1,000. Furthermore, if a holder fails to deliver property as required to the treasurer, then the treasurer may compel delivery in an appropriate court, and shall assess a civil penalty equal to 25% of the value of the property that should have been delivered. T.C.A. § 66-29-129.

Miscellaneous County Regulatory Authority

Cable TV. Current state law gives any municipality or county the authorization to regulate the operation of cable television companies serving citizens within its territorial limits by the issuance of franchise licenses. However, a county may not issue a franchise within a municipality. T.C.A. §7-59-102. T.C.A. §§ 7-59-103 through 7-59-108 provide details regarding payment of fees, customer complaints, the use of public property by cable television companies, and other issues governing the operation of cable television. Furthermore, the statute sets out requirements for public notice and a hearing prior to granting a franchise for cable service and also sets out restrictions on granting an overlapping franchise. T.C.A. § 7-59-201 *et seq.*

Before taking any action regarding cable television or other telecommunications services, counties must consult three major pieces of federal legislation: the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 *et seq.*), the Cable Television Consumer Protection Act of 1992, and the sweeping Telecommunications Act of 1996. This last item, effective as of February 8, 1996, is the first major overhaul of federal telecommunications law since 1934. The intent of the 1996 act is to reduce regulation of these services on all levels and promote competition within and between the different industries that are beginning to overlap due to new technology. Basically this means that the distinction between cable, telephone, video and other communications industries will begin to blur as companies begin offering multiple services and many new companies enter this field.

Local and state regulations that prohibit or have the effect of prohibiting any entity from providing telecommunications services are pre-empted by this federal statute (Section 253, Telecommunications Act of 1996). However, this limitation is not intended to prevent local governments from managing public rights of way and receiving fair and reasonable compensation for the use of the right of way, as long as it is done in a competitively neutral and nondiscriminatory manner. Counties should prepare for the expansion of these fields and begin developing a comprehensive plan for the management of public rights of way. Look for continuing change in this area as the Federal Communications Commission develops rules and regulations to implement the act and as the lobbying efforts of the industry move to the state level.

Federal law provides that a State or other franchising authority (including counties) may also hold an ownership interest in a cable service. 47 U.S.C.A. § 533. However, until recently, counties in Tennessee lacked the authority to operate a cable television franchise Op. Tenn. Att’y Gen. 88-170 (Sept. 20, 1988). In recent years, the legislature has amended Title VII, Chapter 52 of the code to allow municipalities that operate an electric plant to enter into the telecommunications service field. “Municipality” is defined under that chapter of the code to include both metropolitan governments and counties. Under 7-52-401 and following, municipalities are authorized to provide telephone, telegraph or telecommunications services through the board or supervisory authority that operates the electric system. This industry is highly regulated by both the Tennessee Regulatory Authority and the Federal Communications Commission. Any telecommunications system operated by a county would have to conform to all such regulations and requirements. Also, under 7-52-601 and following, the same municipalities are authorized to provide cable television services, two-way video transmission, video programming, internet services or similar services. Both Title VII, Chapter 52, parts 4 and 6 include extensive regulations regarding how such services may be provided and how

the utility must be structured. These laws, as well as the federal laws discussed above should be thoroughly consulted by any local government interested in entering these arenas.

Debris Removal and Weed Control. Counties are granted permissive authority regarding the removal of overgrown vegetation, accumulated debris, and vacant dilapidated buildings or structures in the county. Owner occupied residences are not included, except in certain counties designated by narrow population class. T.C.A. § 5-1-115. Owners of the property are to be provided with notice to remedy the situation before the county may act. Counties are granted a lien on the property for the cost of remedying or removing the situation. Also, counties are authorized to adopt regulations for litter and refuse control under T.C.A. § 39-14-504. This statute is similar to the authority granted by T.C.A. § 5-1-115 but does not expressly deal with dilapidated buildings. This statute's enforcement mechanisms include the placing of lien on the property to reimburse the county for the cost of removal of the garbage, litter or refuse and the imposition of a monetary penalty enforceable in general sessions court according to T.C.A. § 5-1-121.

Regulation of Adult-Oriented Entertainment and Massage. The primary state law which purports to grant counties authority to regulate adult-oriented establishments and entertainers, the Adult-Oriented Establishment Registration Act of 1998, T.C.A. § 7-51-1101 *et seq.*, replaces a former and somewhat similar registration act which was declared unconstitutional by a federal district court. *Brothers Three Enterprises v. Knox County*, No. CIV-3-89-0035 (E.D. Tenn., N.D., February 4, 1991). This registration law is optional for county governments and may be adopted by a two-thirds majority of the county legislative body.

There is another general state law which governs hours of operation of adult-oriented establishments that is codified at T.C.A. § 7-51-1401 *et seq.* This law prohibits these businesses, except those offering only live stage shows, from opening before 8:00 a.m or remaining open after midnight Monday through Saturday. On Sunday and legal holidays they must remain closed. Local governments may establish shorter hours of operation, but may not extend the hours. The act also contains regulations regarding the structure and type of lighting in viewing booths, and specifies penalties for violations.

Although under previous law counties could adopt an optional act to regulate massage services within the county, those statutes (T.C.A. § 63-18-101 *et seq.*) have been repealed and superceded by general law enacting a state licensing system in T.C.A. § 63-18-201 *et seq.* Under the new act a state board performs all licensing and regulatory functions which were formerly under the authority of the county board.

Animal Control. Under prior law counties lacked the power to enact comprehensive animal control regulations, except through private act. Recent legislation authorizes the county legislative body, by resolution, to “license and regulate dogs and cats, establish and operate shelters and other animal control facilities, and regulate, capture, impound and dispose of stray dogs, stray cats and other stray animals.” T.C.A. § 5-1-120.

Enforcement Powers. Legislation passed in 1995, commonly known as the “County Powers Act,” contains provisions for expanded county enforcement powers. It authorizes the county legislative body to establish a monetary penalty for violation of any rule or regulation which the county has the

power to enact. Penalties of up to \$500 for each violation may be passed by resolution. T.C.A. § 5-1-121.

Intergovernmental Agreements

Agreements for the joint exercise of powers may be entered into between cities, counties, and other public agencies of the state and the federal government. T.C.A. § 12-9-104. Governing bodies may enter into contracts “with any one or more public agencies to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform.” T.C.A. § 12-9-108.

Commercial Driver Licenses

County employees operating commercial type vehicles and those requiring a special endorsement must obtain a commercial driver license in order to operate many county vehicles. Vehicles (including vehicle combinations) that fall within the commercial classification include the following:

1. Vehicles weighing more than 26,000 pounds (gross vehicle weight rating);
2. Vehicles designed to transport more than 15 passengers (including the driver); and
3. Vehicles transporting hazardous material requiring placarding. T.C.A. § 55-50-102.

Vehicles requiring a special endorsement listing on a driver license include ones listed below:

1. Those authorized to pull multiple trailers;
2. Those designed to carry more than fifteen passengers (including the driver);
3. Tank vehicles;
4. Those transporting hazardous materials requiring placarding; and
5. School buses.

The commercial driver license requirements include passing grades on certain knowledge and skills tests as well as a good driving record. A “grandfather” provision exists which exempts certain drivers from having to take the skills test. Furthermore, operators of emergency vehicles are exempt from these provisions.

School bus drivers have some specific requirements for obtaining their licenses. They must obtain a Class C commercial license with school bus endorsement. T.C.A. § 55-50-102, Op. Tenn. Att’y Gen. 89-122 (Sept. 21, 1989). This endorsement may be issued only if the applicant has had five years of unrestricted driving experience and can demonstrate good character, competency, and fitness. T.C.A. § 55-50-302.

APPENDIX

NUMBER OF VOTES REQUIRED FOR A MAJORITY OF THE COUNTY LEGISLATIVE BODY

One issue which comes up occasionally concerns the number of county commission members needed to pass a particular measure. A majority of the members of the county legislative body constitutes a quorum, that is, a sufficient number to hold a meeting. (T.C.A. 5-5-108). However, T.C.A. § 5-5-109 states that a “majority of the members constituting the county legislative body, and not merely a majority of the quorum” is, in general, required to transact business. And, even though a majority vote is normally needed, certain statutes require a two-thirds vote before a specific action can be taken. Again, this language refers to the percentage of the entire membership, not merely of those present, although vacancies in office should not be counted when figuring either a two-thirds or a majority. The following chart illustrates these principles:

	Number of Members																
	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Majority:	5	6	6	7	7	8	8	9	9	10	10	11	11	12	12	13	13
Two-Thirds:	6	7	8	8	9	10	10	11	12	12	13	14	14	15	16	16	17

For example, if a county legislative body has fifteen members, ten of whom are present for a meeting, all ten of those would have to vote in the affirmative in order to pass a measure requiring a two-thirds vote; eight of the ten present would constitute a majority.

SAMPLE RESOLUTION

RESOLUTION NO. _____

RESOLUTION TO FIX THE JAILER'S FEE OF _____ COUNTY

WHEREAS, *Tennessee Code Annotated*, Section 8-26-105, authorizes county legislative bodies to pass a resolution fixing the amount of jailer's fees which may be applied to misdemeanor prisoners for each twenty-four hour period the prisoner is confined to the local facility, (jail or workhouse) and,

WHEREAS, the county legislative body of _____ County is desirous that it be fully compensated for the housing of misdemeanor prisoners.

NOW, THEREFORE, BE IT RESOLVED by the county legislative body of _____ County, meeting this _____ day of _____, 20__, that:

SECTION 1. The jailer's fee for _____ County is hereby fixed at _____ dollars (\$____) per misdemeanor prisoner per twenty-four hour period of confinement in the county jail or county workhouse.

SECTION 2. The jailer's fee herein fixed shall be collected by the clerk of the appropriate court as a part of the fines and costs imposed in each misdemeanor case upon a finding of guilt.

SECTION 3. A copy of this Resolution shall be transmitted to each clerk of court hearing criminal matters in _____ County and shall be spread upon the minutes of this meeting by the County Clerk.

SECTION 4. This resolution shall take effect upon adoption, the general welfare requiring it.

Adopted this _____ day of _____, 20__.

APPROVED:

County Executive

ATTEST:

County Clerk

SAMPLE PRIVATE ACT

AN ACT relative to the levy of a privilege tax on the occupancy of any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourist courts, tourist cabins, motel or any place in which rooms, lodgings, or accommodations are furnished for transients for a consideration in _____ County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. For the purposes of this Act:

(a) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental unit other than the United States or any of its agencies, or any other group or combination acting as a unit.

(b) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.

(c) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel.

(d) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days.

(e) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

(f) "County" means _____ County, Tennessee.

(g) "Operator" means the person operating the hotel whether as owner, lessee or otherwise, and shall include governmental entities.

(h) "Clerk" means the county clerk of _____ County, Tennessee.

SECTION 2. _____ County is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient, in the amount of five percent (5%) of the rate charged by the operator.

SECTION 3. The proceeds received by the county from the tax shall be designated and used for (specify purpose).

SECTION 4. Such tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of his or her hotel and to be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to _____ County.

When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected from or charged to him or her, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 5. (a) The tax levied shall be remitted by all operators who lease, rent or charge for any rooms or spaces in hotels within the county, to the county clerk or such other officer as may by resolution be charged with the duty of collection thereof, said tax to be remitted to such officer not later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect the said tax from the transient at the time of the presentation of the invoice for said occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the county entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the operator in accounting for remitting the tax levied by these sections the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the clerk in the form of a deduction in submitting his or her report and paying the amount due by such operator, provided the amount due was not delinquent at the time of payment.

SECTION 6. The clerk, or other authorized collector of the tax, shall be responsible for the collection of said tax and shall place the proceeds of such tax in accounts for the purposes stated herein. A monthly tax return shall be filed under oath with the clerk by the operator with such number of copies thereof as the clerk may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the clerk and approved by the county legislative body

prior to use. The clerk shall audit each operator in the county at least once per year and shall report on the audits made on a quarterly basis to the county legislative body.

The county legislative body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this Act, including the form for such reports.

SECTION 7. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 8. Taxes collected by an operator which are not remitted to the county clerk on or before the due dates shall be delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition for penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is unlawful and shall constitute a misdemeanor punishable upon conviction of a fine not in excess of fifty dollars (\$50.00).

SECTION 9. It shall be the duty of every operator liable for the collection and payment to the county of any tax imposed by this Act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the county, which records the county clerk shall have the right to inspect at all reasonable times.

SECTION 10. The county clerk in administering and enforcing the provisions of this Act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of *Tennessee Code Annotated* or otherwise provided by law for the county clerks.

For his or her services in administering and enforcing the provisions of this Act, the county clerk shall be entitled to retain as a commission five percent (5%) of the taxes so collected.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedies provided in Title 67, *Tennessee Code Annotated*, it being the intent of this Act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected under the authority of this Act; provided further, the county clerk shall possess those powers and duties as provided in *Tennessee Code Annotated*, § 67-1-707 for the county clerks.

With respect to the adjustment and settlement with taxpayers, all errors of county taxes collected by the county clerk under the authority of this Act shall be refunded by the county clerk.

Notice of any tax paid under protest shall be given to the county clerk and the resolution authorizing levy of the tax shall designate a county officer against whom suit may be brought for recovery.

SECTION 11. The proceeds of the tax authorized by this Act shall be allocated to and placed in the General Fund (or other fund) of _____ County to be used for the purposes stated in Section 3 of this Act.

SECTION 12. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 13. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of _____ County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by the presiding officer of the county legislative body to the Secretary of State.

SECTION 14. For the purpose of approving or rejecting the provisions of this Act, it shall become effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided by Section 13.

USING THE *TENNESSEE CODE ANNOTATED*

Tennessee Code Annotated

The *Tennessee Code Annotated* is the codification of the statutory laws of Tennessee. All of the laws of general application passed by the General Assembly and approved by the Governor or passed over the Governor's veto, are codified in this publication. Each volume contains a pocket supplement which reflects recent amendments to existing laws and new laws passed by the General Assembly dealing with the subject matter covered in the main volume. These supplemental pocket parts are replaced each year and the main volume is revised and reprinted periodically. Subscription to the Tennessee Code can be obtained by writing the publisher, The Michie Company, in Charlottesville, Virginia.

Each section of the Tennessee Code is referenced by a numbering system. The code commission has changed the numbering system from a two-tier to a three-tier numbering system. Each new volume contains a parallel reference table which refers to the two-tier number and the new three-tier number. An example of this change is as follows:

Under the old two-tier system T.C.A. § 4-2901 would be referred to as Title 4, Chapter 29, Section 01. Under the current three-tier system it is T.C.A. § 4-29-101 and referred to as Title 4, Chapter 29, Part 1, Section 01.

When you look up a section in the Tennessee Code be sure to look in the pocket supplement for any recent changes in the section. Following each section in the supplement there are "amendment notes" which describe exactly what changes the General Assembly has made in the statute. Statutes may also be followed by "compiler's notes" which contain a variety of information to inform the reader of special circumstances concerning the statute. There is also a reference to other Code sections which may affect the Code section being read and cross references to other Code sections which mention the section being read. Each section is also followed by a list of cases in which the section has been cited and a brief annotation of cases which construe or apply to the statute.

Indexes. Volumes 14, 15, and 16 comprise the General Index for the *Tennessee Code Annotated*. These paperback volumes are revised and replaced annually. In addition, at the back of each bound volume in the set, there is a volume index which indexes all material contained in that particular volume. The pocket part supplement to each bound volume contains a "Ready- Reference Index" which gives a brief description of the statutory material contained in the supplement.

Tables. The Tables Volume (Volume 13) of the *Tennessee Code Annotated* contains parallel tables referring the user from all previously two-tier section numbers to the new three-tier section numbers. It also contains "disposition tables" which list public chapters passed by the General Assembly and indicate where each has been codified. Other helpful

information contained in this volume is the mortality table, annuity valuation tables, interest tables, a perpetual calendar, a table of county populations based on the federal census and a table showing the incorporation date of Tennessee municipalities.

Private Acts. Private acts applying to only one county are not included in the *Tennessee Code Annotated*. Each year the secretary of state publishes a volume containing all private acts passed that year by the General Assembly. CTAS collects the private acts applying to each county and publishes individual volumes of private acts for each county. These volumes are updated periodically and provided to county officials upon request.

SAMPLE RULES REGULATING THE PROCEDURES OF THE COUNTY LEGISLATIVE BODY

RULE 1 CONVENING THE BOARD

The Board shall meet at the County Courthouse, 9:30 A.M. on the first Monday in January, April, July and October. Should any prescribed meeting date fall on a legal holiday or if an emergency should arise, the Board shall meet at 9:30 A.M. on the following day. Notification of the members for regular meetings shall be left to the discretion of the Chairperson and Clerk (County Clerk).

RULE 2 QUORUM

A quorum for the transaction of business shall be a majority of the duly qualified and acting members of the Board of County Commissioners. Vacancies shall not be included in determining the membership of the Board.

RULE 3 ORDER OF BUSINESS

1. Call to order by Chairperson. In the absence of the Chairperson, the Chairperson Pro Tempore shall preside.
2. Roll call
3. Reading and approval of the minutes
4. Resolutions for special recognition, memorials, etc.
5. Elections, appointments and confirmations
6. Reports - county officials, standing and special committees
7. Unfinished business
8. New business
9. Announcement and statements
10. Adjournment

RULE 4
GENERAL

- 4A. *WHO MAY ADDRESS THE BOARD:* It is a commissioner's right to address the Chairperson and the Board at any appropriate time after proper recognition by the Chairperson. It may be allowable for non-commission members to address the Board if there is no objection by the Board or if a majority of the membership vote to allow such participation. The Chairperson may set a limit on the time a non-commission member may be allowed to speak.
- 4B. *GAINING THE FLOOR:* In all cases, the member who shall first rise and address the Chairperson shall be entitled to speak first; but when two or more members shall rise and address the Chairperson at the same time, the Chairperson shall name the member who shall speak first.
- 4C. *SPEAKING:* When any member is about to speak in debate, discussion or deliver any address on any matter whatsoever to the Board, the member shall rise and respectfully address the Chairperson and shall, after being recognized by the Chairperson proceed with the intended remarks, confining such remarks strictly to the question under debate and avoiding all personalities.
- 4D. *CONSENT TO YIELD:* While a member is speaking s/he is not to be interrupted, except for a question by another member. If the speaker declines to yield the floor for a question, then s/he shall not be interrupted, but shall yield to questions at the end of the presentation.
- 4E. *POINTS OF ORDER:* If any member, speaking or otherwise, transgresses the Rules of the Board, the Chairperson shall, or any member may, call to order, in which case the member so called to order shall immediately sit down. When the point of order has been decided by the Chairperson, the member having the floor can proceed, subject to the decision made.
- 4F. *APPEAL ON RULING:* Any member of the Board may appeal to the Board from the ruling of the Chairperson and a majority vote of the members present shall decide the appeal.

RULE 5
MOTIONS

- 5A. *INTRODUCTION AND DEBATE:* Motions may only be made by members. No motion shall be debated until the same is seconded and stated by the Chairperson.

- 5B. *MOTIONS IN WRITING*: When a motion is made and seconded, it shall be reduced to writing by the Clerk, and read by the Chairperson prior to any debate or vote.
- 5C. *REQUIRING ROLL CALL*: Motions shall be put to the Board for a voice vote, by the Chairperson; provided however, any three members of the Board may require a roll call by raising of hand or indicating otherwise.

RULE 6

RESOLUTIONS

- 6A. *INTRODUCTION*: Any proposed resolution may be introduced only by a member of the Board, and the Clerk or Chairperson shall not receive or file any resolution that is not reduced to writing and signed by at least two members of the Board.
- 6B. *AUTHOR*: A resolution may have as many signatures as there are members of the Board. However, the first two signatures on the resolution shall be deemed the authors for the purpose of debate.
- 6C. *ROLL CALL VOTE*: Resolutions shall be put to the Board for a roll call vote by the Clerk. Each member shall vote “yes” or “no” on its passage when the Clerk calls his/her name.
- 6D. *CHANGING VOTE*: Any member of the Board may change his/her vote before the results of a roll call is announced by the Clerk. It shall be the duty of the Clerk, at the end of each roll call, to inquire of those who passed or were absent when the roll was called if they desire to vote; also, if anyone who has voted wishes to change his/her vote. Then, the results shall be announced by the Clerk.
- 6E. *SUCCESSFUL RESOLUTIONS*: All successful resolutions, shall be submitted to the Chairperson for his/her signature and attested by the signature of the Clerk. The resolution along with the vote of the members shall then be submitted to the County Executive, within five days of its passage, for his/her consideration.

RULE 7

ELECTIONS AND APPOINTMENTS

- 7A. *ELECTIONS AND NOMINATIONS FROM THE FLOOR*: When the Chairperson is to receive nominations from the floor, a member may nominate only one person. The floor will be kept open until every member has had an opportunity to make nominations or until a motion has been made and seconded that nominations cease and a majority of those present so vote.
- 7B. *APPOINTMENTS AND CONFIRMATIONS*: When the Board is called upon to appoint someone from a list of nominees (such as a county medical examiner) or to

confirm an appointee of the County Executive (such as a department head) then the name or names of those being considered for the position shall be read to the membership and discussion of each such appointee shall follow.

- 7C. *ELECTION OR CONFIRMATION:* All ballots for election or confirmation shall be cast by voice vote as each member's name is called by the Clerk. If the vote is on confirmation of an appointee each member will vote either "yes" or "no" on the confirmation. A majority of the membership of the full Board is required for election or confirmation.
- 7D. *SECOND BALLOT:* If no one is elected on a given ballot, the nominee receiving the smallest number of votes will be dropped and the vote will be taken again until a nominee is elected by the required majority of the membership.

RULE 8

COMMITTEE MEMBERSHIP

NOMINATING COMMITTEE: The Chairperson shall, at the July meeting, appoint a nominating committee from the membership of the Board. It shall be the duty of this nominating committee to recommend Board members for appointment to the standing committees of the Board. This committee shall make its report and recommendations to the full Board at the October meeting. However, members of the Board may also make committee nominations from the floor. All standing committees shall be elected annually at the regular October meeting.

RULE 9

APPROPRIATION REQUESTS

REQUESTS FOR APPROPRIATION: Requests for appropriations in addition to those within the annual budget shall be submitted in the following manner:

- 9A. The request shall be submitted in writing to the appropriate committee of the Board and shall reflect the estimated cost which shall be attached to the proposed resolution.
- 9B. All requests for appropriations falling in this area shall be summarized and submitted in writing to each member of the Board at least seven days prior to the regular or called meeting such request is to be submitted.
- 9C. The committee to which the request has been referred shall in open meeting of the Board, assume one of the following positions: (1) Adoption recommended (2) Rejection recommended or (3) Submitted to the Board without recommendation.

- 9D. The budget committee chairperson or a member designated by him/her shall advise the Board as to fund availability before a vote is taken on appropriations in any amount which are in addition to those of the annual budget.
- 9E. The resolution requesting such appropriations shall be voted upon by membership of the Board as provided by Rule 6 of these rules.

RULE 10

SUSPENDING THE RULES

Any rule or rules may be suspended by a two-thirds (2/3) majority vote of the members present.

RULE 11

ROBERT'S RULES OF ORDER

All matters not covered herein shall be governed by Robert's Rules of Order Revised, as contained in the latest copyrighted edition.

RULE 12

THE CHAIRPERSON

- 12A. *ELECTION*: Annually, at its October regular meeting the Board shall elect a Chairperson and a Chairperson Pro Tempore. The Chairperson may be one of the membership of the Board or the County Executive. If the Board elects as its Chairperson the County Executive, and s/he accepts the position, then the County Executive shall relinquish his/her veto power.
- 12B. *VOTING BY THE CHAIRPERSON*: The County Executive Chairperson may vote only in the case of a tie. A member chairperson may vote on all issues coming before the body, just as any other member.
- 12C. *CALL TO ORDER*: The Board shall be called to order by the Chairperson. In the absence of the Chairperson, the Chairperson Pro Tempore shall preside. In the absence of the Chairperson Pro Tempore, the Board shall be called to order by the County Clerk, and shall elect one of its members to preside over the deliberations.
- 12D. *SPEAKING*: Should the Chairperson desire to speak upon any subject either in the negative of the affirmative, s/he may do so, provided s/he vacates the chair. Whereupon the Chairperson Pro Tempore shall preside until the matter under consideration is disposed of by the Board. However, the Chairperson may answer

questions, provide information, and give explanations from the chair, the Board not objecting.

- 12E. *PRESERVE ORDER*: The Chairperson shall preserve order and decorum. S/he may speak to points of order in preference to other members, rising from his/her seat for that purpose. The Chairperson shall decide questions of order, subject to an appeal to the Board of any member.
- 12F. *ORDER OF RECOGNITION*: Before a member is allowed to speak twice on the same subject the Chairperson shall inquire if there is another member who has not spoken on that subject and who wishes to speak.
- 12G. *MOTIONS*: Once a motion has been made and duly seconded, the Chairperson shall state the motion so that debate on the motion may begin.
- 12H. *CLARIFICATION*: The Chairperson shall rise to state or put a question and shall clearly state the question before the Board before the vote on the question is taken. A member may ask for clarification of the question up until the result of the vote is announced.
- 12I. *AGENDA*: The Chairperson will forward to each member of the Board the tentative agenda of the next Board meeting not less than five days prior to meeting date.

RULE 13

THE CLERK

- 13A. *NOTICE*: The Clerk shall notify each member of the Board of any special or called meetings not less than five days in advance thereof. Notification of regular meetings shall be within the discretion of the Clerk and the Chairperson.
- 13B. *MINUTES*: The Clerk shall reduce the minutes of each Board meeting to writing and attach a copy of each resolution considered and the vote thereon. The minutes shall be prepared within five days after said meeting and placed in a well bound book for public inspection. A copy of the minutes of the last meeting shall be forwarded to each board member with the prepared agenda or meeting notice.
- 13C. *RESOLUTIONS*: A copy of all resolutions approved by the Board shall be submitted to the County Executive, within five days after such approval, for his/her consideration and signature.
- 13D. *ROLL CALL*: In all instances involving authorization to expend public funds, the Clerk shall call the roll for "yes" and "no" votes. In all instances where the roll is called for any vote, the Clerk shall make such roll call and the vote of each member a part of the record of the meeting and include it in the official minutes.

- 13E. *CHANGE OF VOTE*: It shall be the duty of the Clerk, at the end of each roll call, to inquire of those who passed or were absent when the roll was called if they desire to vote; also, if any member who has voted wishes to change his vote. Subsequently, the Clerk shall announce the results.

RULE 14 SHERIFF

The Sheriff or a designated deputy shall attend each session of the Board. That officer shall preserve order and carry out orders of the presiding officer of the Board. The attending officer shall be paid for these services, unless such officer is performing this duty during regular working hours, paid by the county, and is not working overtime.

RULE 15 COUNTY ATTORNEY

The County Attorney shall, as legal consultant, attend all meetings of the Board. It shall be the duty of the County Attorney to voice his/her negative opinion when, in his/her opinion, the Board is in the process of taking action outside of its jurisdiction, or in any manner proceeding illegally, and to give his/her legal opinion on any subject where such guidance is requested by the Chairperson.

RULE 16 COMMITTEES

- 16A. All committees, standing and temporary, shall meet and elect from its membership a Chairperson. The election of a Secretary shall be optional in the absence of a specific mandate of the Board.
- 16B. Standing committee chairmen shall report to and confer with the Chairperson on all pertinent matters to be presented at the next meeting of the Board.
- 16C. All committee chairpersons shall contact the County Attorney on matters appearing to warrant legal evaluation prior to presentation to the Board.
- 16D. Should questions arise as to jurisdiction of any committee it shall be referred to the Chairperson and/or to the County Attorney for determination, subject to an appeal to the Board at its next regular meeting.

16E. The following procedure shall be followed pertinent to committee reports and related action:

1. The committee chairperson or a member designated by him/her shall make the presentation in an open meeting of the Board.
2. Upon completion of a report the speaker shall yield to questions.
3. There shall be a vote on the proposition when discussion is complete and when there is a call for the question by the Board.

16F. If for any reason the chairperson of a committee fails or refuses to call a meeting, the Chairperson of the Board, or a majority of the committee membership may do so.

RULE 17 CONFLICT WITH LAW

In the event any of the foregoing rules are determined to be in conflict with statutory provisions, then that part in conflict shall be null and void.

COUNTY BUDGET LAWS¹**Charters**

Shelby	Charter
Knox	Charter
Davidson	Metro Charter
Moore	Metro Charter

1957 Act

Anderson	Schools Included
Blount (with private act)	Schools Included
Cheatham	Schools Excluded
Franklin	Schools Excluded
Greene	Schools Excluded
Jackson	Schools Excluded
Johnson	Schools Included
Lawrence	Schools Excluded
Loudon	Schools Included
Montgomery	Schools Excluded
Overton	Schools Excluded
Polk	Schools Excluded
Roane	Schools Included
Sullivan	Schools Excluded
Washington	Schools Excluded
Williamson (with 1990 Budget Law)	Schools Excluded

Private Acts

Benton
 Chester
 Dyer
 Gibson
 Hamilton
 Hardeman
 Henderson
 Henry
 Madison
 Marshall
 Maury
 McNairy
 Meigs
 Obion
 Rutherford

1981 Act

Campbell
 Cumberland
 Henderson
 Hickman
 Lincoln
 McMinn
 Monroe
 Morgan
 Rhea
 Robertson
 Scott
 Sumner
 Weakley
 White
 Wilson

1993 Law

Decatur
 Dekalb
 Hardin

¹All other counties are under general law budgeting provisions.

INDEX

Abandoned property	208-209
Accounting	84, 87-89, 92-97
Administrator of Elections	14, 42-43
Adult-Oriented Establishment Board	210-211
Ambulance service	158, 183
Americans with Disabilities Act	160
Annual work program	28, 133-134
Anticipation notes	101
Antitrust	172
Appraisals	20, 58
Assessor of property	14-16, 18, 19-20, 36, 60
Auditing	88, 97
Banks	78
Basic Education Program (BEP)	143, 149
Beer Tax	75-76, 193
Board of education	143-149
Board of health	182
Board of workhouse commissioners	121, 125-126
Bond anticipation notes	101
Bonds	79, 99-106
Bonds of county officials	12, 13, 24, 26, 30, 33
Bridges	99, 104, 133-134, 137, 140-141, 197
Budget	5-6, 19, 84, 87-88, 92-96, 148-149
Building codes	200
Business Tax	77-78
Cable Communications Policy Act of 1984	209
Cable TV	209-210
Campaign financial disclosure	50-53
Capital outlay notes	101-102
Certified Tax Rate	59
Chancery court	26, 111-113
Charter commission	7-8
Charter form of county government	6-7
Chief administrative officer	12, 14, 27-28, 47, 125, 133-137
Circuit Court	25-26, 110-113
Civil defense (Emergency Management)	117
Clerk and master	25-26, 36, 110, 116
Clerks of courts	84, 96, 152
Coal Severance Tax	65
COBRA	162
Commercial Driver License	163, 211-212
Community Corrections Act of 1985	128-129
Community health agencies	183
Compensable hours	157
Compensation of County Legislative Body	18
Compensatory time	156, 158, 164
Computer Records Storage Requirements	205
Conflict of interest disclosure	38-40, 53
Conflicts of interest	21, 38-40, 53-54, 137
Constables	30
Constitutional offices	1, 16-26
Correctional facilities	120-129
County buildings	207
County clerk	21, 32, 84
County coroner	29

County Correction Facilities and Prisoner Care	120-129
County Correctional Incentives Act	128
County executive	6, 12, 14, 16-17, 36
County law enforcement	119-120
County legislative body	5, 17-19
County medical examiner	29
County public records commission	204
County Purchasing Law of 1983	89-90
County roads	133-141
County surveyor	31, 32
County trustee	24-25, 59, 61, 91, 93
County Uniform Highway Law	133-141
Courthouse hours	154
Courts	107-116
Debris removal	210
Deputies and Assistants	15, 20-22, 84, 152-153
Director of schools	143, 145-147
Discrimination	151, 155, 159-161
Drug testing	162-163
Early voting period	48
Economic adjustment financing	106
Economic development bonds	103-104
Education	143-149
Education Improvement Act	143
Election officials	43
Elections	41-55
Emergency loans	105
Emergency management agency	117-118
Emergency medical services	183
Eminent domain	141, 146, 175, 180
Equal Pay Act	159, 160, 171
Excise Tax Applied to Banks	78
Expense Accounts	165-166
Fair Labor Standards Act	156-159, 171
Family and Medical Leave Act	156, 159-160
Fees of County Officers	83
Financial Management System of 1981	89-90, 93
Fire protection	117
Fiscal Control Acts of 1957	94-96
FMLA	156, 159-160
Funding bonds	100-106
Gasoline tax	69-73
Gasoline tax for local transportation	73
General obligation bonds	100 92, 94
General Sessions Court	25, 114-115
Governmental Tort Liability Act	167-171
Grant anticipation notes	101
Group insurance	161-162
Hazardous Chemical Right-to-Know-Law	180-181
Hazardous waste	174, 177, 181-182
Highway User Fuel Tax	73
Highways and roads	27, 133-141
Home rule	7
Hotel/Motel Tax	79-80
I-9	162
Immunity from suit	167-171
Income tax	79
Industrial Building Bond Act of 1955	104

Industrial development corporation	103-104, 201
Insurance	124-125, 152, 161-164, 169-171
Intergovernmental agreements	211
Inverse condemnation	172
Investment of county funds	91
Judges	107-116
Judicial commissioners	116
Jurisdiction of Courts	107-116
Jury duty	154-155
Juvenile court	115-116
Juvenile Detention	129-131
Landfills	176-180
Law enforcement	119-120
Letter of agreement	15, 20-22, 24-26, 84, 152-153
Liability	167-172
Libraries	207-208
Liquefied gas tax	72
Litigation taxes	80-83
Local Option Budgeting Law of 1993	92
Local option sales tax	68-69
Maintenance of effort	148
Marriage License Taxes	83
Massage	210
Maternity leave	155-156
Military leave	156
Mineral Severance Tax	66
Minimum wage	157
Mixed Drink Tax	74
Mobile Home Registration Fee	77
Motor Vehicle Fuel Use Tax	70
Municipal Electric and Gas System Tax Equivalent Payments	65
Nominating petitions	46
Oath of Office	11-12, 16, 20, 23, 26, 28, 41
Office space	154
Oil and Gas Severance Tax	66
Open Meetings Act	203
Overtime	133, 156-159
Personnel policies	151-166
Petroleum products taxes	69
Planning commission	139-141, 173, 185, 188, 196-198
Prisoners	123-132
Private roads	135, 137-139
Property tax	57-65
Public Fords, Ferries and Bridges	141
Public school nurse program	183
Purchasing	40, 87, 89-91, 94-96, 134-135
Purchasing Law of 1957	95
Purchasing Law of 1983	89-90
Qualifying deadlines	44-46
Reapportionment	54-55
Reappraisal of property	59-62
Records management	204-205
Regional planning	140-141, 173, 187, 196-200
Register of Deeds	21-22
Removal from office	28, 36-37, 137, 154
Retirement	165
Revenue bonds	101
Salaries	5, 14-20, 84, 95, 114, 147, 153, 166

Sales and Use tax	67-69
School bonds	2, 102
Severance Taxes	65-67
Sheriff	14, 22-24, 33, 47, 84, 119-132, 151-153, 171
Sheriff's civil service	151
Solid waste	173-184
Solid Waste Disposal Act	175-176
Solid Waste Management Act	173-175
Special elections	49
Special Tax on Petroleum Products	71
State emergency loans	105
State funds for education	149
Sunshine law	42, 203
Superintendent of education	29, 93, 143
Superintendent of schools	18, 145
Surety Bonds	12, 24
T.V.A. In Lieu of Tax Payments	64
Tax equivalent payments	65
TCRS	165
Telecommunications Act of 1996	209
Temporary absence of county executive	36
Temporary vacancies	36
Tennessee Local Development Authority	102
Tennessee Supreme Court	107
The Tennessee Plan	107
Tobacco Tax	76
Tort liability	167-171
Unclaimed property	208, 209
Unemployment compensation	163-164, 170
Vacancies due to military service	36
Vacancies in office	35-37
Veto	5,6,17
Voting leave	154
Wastewater treatment	184
Water systems	184
Weed Control	210
Wheel tax	77
Work release	126-128
Workers' compensation	163
Workhouse commission	121-122
Zoning	188, 198-200

The University of Tennessee does not discriminate on the basis of race, sex, color, religion, national origin, age, disability, or veteran status in provision of educational programs and services or employment opportunities and benefits. This policy extends to both employment by and admission to The University.

The University does not discriminate on the basis of race, sex, or disability in its education programs and activities pursuant to the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990.

Inquiries and charges of violation concerning Title VI, Title IX, Section 504, ADA, or the Age Discrimination in Employment Act (ADEA) or any of the other above referenced policies should be directed to the Office of Diversity Resources (DRES), 2110 Terrace Avenue, Knoxville, Tennessee 37996-3560, telephone (865) 974-2498 (V/TTY available) or (865) 974-2440. Requests for accommodation of a disability should be directed to the ADA Coordinator at the Office of Human Resources, 600 Henley Street, Knoxville, Tennessee 37996-4125.

E15-1570-00-003-01